



R/W MANUAL CHANGE
(1993 Edition)

RWMC- 145



PROCEDURAL HANDBOOK
(1984 Edition)

RWPH-____-____-____
TRANSMITTAL#____

TITLE:
RELOCATION ASSISTANCE

APPROVED BY:

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VERNON V. RHINEHART

DATE ISSUED:

JAN 13 2005

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SUBJECT AREA:

CHAPTER 10 – RELOCATION ASSISTANCE

ISSUING UNIT:

OFFICE OF RIGHT OF WAY PROJECT DELIVERY

SUMMARY OF CHANGES: Updates Sections 10.01.00.00, 10.03.00.00, 10.04.00.00, 10.05.00.00, and Tables of Contents for sections, forms, and exhibits; adds new Exhibits 10-EX-35, 10-EX-36, 10-EX-37, and 10-EX-38; deletes Form RW 10-31; and adds new Forms RW 10-22 and RW 10-26.

PURPOSE

This manual change makes minor corrections to clarify intent, gives guidance on non-tenured displacees, changes the Self-Move Agreement from a form to an exhibit, and provides specific guidance for nonresidential displacees obtained from recent discussions with FHWA. Also, any typographical errors have been corrected.

BACKGROUND

District staff and FHWA have worked closely with HQ R/W to ensure that Chapter 10 is accurate and provides specific guidance on providing relocation assistance. Several of the changes are minor in nature and were made in response to District's request to clarify intent or purpose. The major change is in Section 5 which provides additional guidance and instructions to relocate nonresidential displacees to ensure compliance with the intent of 49 CFR 24.

PROCEDURES

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| 10.01.11.05 | Requires Relocation Assistance Branch to work closely with Acquisition during condemnation to avoid global settlements, which include relocation assistance. |
| 10.01.13.05 | Reminds RAP Agents that relocation assistance diaries are subject to discovery in eminent domain matters. |
| 10.03.13.01 | Removes the reference to old manual sections and Relocation Assistance Reference Files. |
| 10.04.07.03 | Adds the statement that the rehabilitation of a replacement dwelling is different than the provision for rehabilitating a previously owned dwelling. |
| 10.04.10.00 | States the options in Chapter 8 when a grantor wants to retain the dwelling and relocate it to the remainder. |

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| 10.04.11.00 | States the reestablished dwelling on a new site or the remainder qualifies as a previously owned replacement dwelling. |
| 10.04.12.12 | Adds the new policy on reverse mortgages. |
| 10.04.12.13 | Renumbered from previous 10.04.12.12. |
| 10.04.26.00 | Clarifies that only the partial owner-occupant is entitled to a relocation assistance payment. |
| 10.04.31.00 | Adds a process that allows RAP Agents to obtain preliminary information from non-tenured occupants prior to possession. |
| 10.05.01.00 | Adds reference to 10.05.01.00. |
| 10.05.01.01 | Renumbered from previous 10.05.02.00. |
| 10.05.02.00 | Renumbered from previous 10.05.03.00. |
| 10.05.03.00 | Provides specific guidance on providing advisory assistance to nonresidential displacees. |
| 10.05.04.01 | Prevents RAP Agents from entering into agreements with moving companies hired to relocate nonresidential displacees. |
| 10.05.04.07 | Prevents a storage payment if the personal property is relocated to a previously owned or leased site. |
| 10.05.04.08 | Advises RAP Agents how to obtain move and storage insurance. |
| 10.05.04.10 | Provides example on an appropriate payment as a moving expense. |
| 10.05.04.11 | Adds information about move specifications. |
| 10.05.04.12 | Requires the RAP Agent to determine the usability of certain printed inventory before determining it is obsolete. |
| 10.05.04.13 | Clarifies that a nonprofit organization can receive a search payment. |
| 10.05.05.00 | RAP Agent must ensure nonresidential displacee is accurately certifying an inventory that contains only personal property. |
| 10.05.05.01 | Adds new section on how to relocate fluctuating inventory. |
| 10.05.06.00 | Removes redundant statement. |
| 10.05.06.01 | Adds new section on obtaining moving bids. |
| 10.05.06.02 | Adds new section on adjusting moving bids. |
| 10.05.08.00 | Adds the word 'actual.' |
| 10.05.08.01 | Adds purpose of monitoring moving activities. |
| 10.05.09.00 | Adds requirement that a Self-Move bid be adjusted for profit and overhead. |

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| 10.05.10.00 | Lowers the MCF amount to \$3,000 per FHWA. Adds statement that payment cannot be made until site has been vacated. |
| 10.05.11.00 | States that payment cannot be made if property is abandoned. |
| 10.05.11.01 | Adds the requirement to include installation costs, and clarifies the value of goods held for resale is considered. |
| 10.05.11.02 | Adds 'code requirements' to the Substitute Property calculation. |
| 10.05.12.00 | Requires the nonresidential displacee to be operational at new site before Reestablishment Payment can be made. Also clarifies some of the other eligible expenses. |
| 10.05.12.01 | Adds provision on paying Reestablishment Payment if nonresidential displacee relocates to the remainder. |
| 10.05.12.02 | Renumbered from previous 10.05.12.01. States that physical changes to the real property at the replacement property are not eligible for reimbursement except as provided for under 24.303(a)(3) and (a)(2)(5). |
| 10.05.12.03 | Renumbered from previous 10.05.12.02. |
| 10.05.12.04 | Adds Exterior Signing as a part of the Reestablishment Payment. |
| 10.05.13.00 | States a non-occupant owner cannot receive moving payments and a Reestablishment payment. |
| 10.05.15.00 | Adds reference to 49 CFR 24, 24D. |
| 10.05.16.00 | Adds provision from 49 CFR 24.306(c) about farm operations receiving an in-lieu payment. |
| 10.05.18.02 | Adds other IRS forms that can be submitted. |
| 10.05.18.03 | Removes reference to obsolete form. |
| 10.05.19.00 | Renumbered from previous 10.05.20.00. |
| 10.05.20.00 | Renumbered from previous 10.05.19.00. |
| 10.05.20.01 | Renumbered from 10.05.21.00 |
| 10.05.21.00 | Designated as "Intentionally Left Blank." |
| 10.05.22.00 | Clarifies how Acquisition notifies RAP. |
| 10.05.25.00 | States displacees who abandon property cannot receive a payment (10.05.11.00). |
| 10.05.26.00 | Changes the "Definitions" Table to 10.05.26.00. |

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| RW 10-22 | Adds new form, "Notice of Eligibility Letter - 180 Day Owner-Occupant Mobile Home." |
| RW 10-26 | Adds new form, "Conditional Entitlement Letter - 180-Day Owner-Occupant Mobile Home." |
| 10-EX-35 | Adds the "Nonresidential Interview Checklist" to be used during the First RAP Call. |
| 10-EX-36 | Adds "Guidelines for Developing Moving Specifications." |
| 10-EX-37 | Adds "Guidelines for Monitoring a Nonresidential Move." |
| 10-EX-38 | Adds "Self-Move Agreement." |

EFFECTIVE DATE

Effective immediately.

MANUAL IMPACT

- Remove the superseded pages and insert the attached pages in the Manual.
- Record the action on the Revision Record.

REVISION SUMMARY

| <u>Chapter</u> | <u>Remove Old Pages</u> | <u>Insert New/Revised Pages</u> |
|-----------------------|--|--|
| | Remove the following in its entirety: | Replace with the following in its entirety: |
| 10 - Sections | Table of Contents (REV 2/2004) 10.01.00.00 (REV 2/2003) 10.03.00.00 (REV 2/2004) 10.04.00.00 (REV 9/2003) 10.05.00.00 (REV 9/2003) | Table of Contents (REV 1/2005) 10.01.00.00 (REV 1/2005) 10.03.00.00 (REV 1/2005) 10.04.00.00 (REV 1/2005) 10.05.00.00 (REV 1/2005) |
| 10 - Forms | Table of Contents (REV 5/2004) RW 10-31 - DELETE ----- ----- | Table of Contents (REV 1/2005) ----- RW 10-22 (NEW 01/2005) RW 10-26 (NEW 01/2005) |
| 10 - Exhibits | Table of Contents REV 9/2003 ----- ----- ----- ----- | Table of Contents REV 1/2005 10-EX-35 (NEW 1/2005) 10-EX-36 (NEW 1/2005) 10-EX-37 (NEW 1/2005) 10-EX-38 (NEW 1/2005) |

CHAPTER 10

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| 03.00 | Time Limit [49 CFR 24.10(c)] |
| 04.00 | Filing of Appeal |
| 05.00 | Region/District Review Panel |
| 06.00 | Right to Representation and Review of Files [49 CFR 24.10(d) (e)] |
| 07.00 | Statewide Relocation Appeals Board |
| 08.00 | RAP Appeals Package |
| 09.00 | Statewide Level Hearing |
| 09.01 | Scope of Review [49 CFR 24.10(f)] |
| 09.02 | Determination and Notification After Appeal [49 CFR 24.10(g)] |
| 10.00 | Appellant's Travel Expenses |
| 11.00 | Resubmission of Appeals |
| 12.00 | Payment of Approved Claims |
| 10.10.00.00 | OTHER RELOCATION ISSUES - Last Resort Housing - Construction, Excess and Rescinded Routes, Rehab and Demolition, Temporary Relocation |
| 01.00 | Last Resort Housing Determination [49 CFR 24.404(a)] |
| 01.01 | Methods of Providing Comparable Replacement Housing [49 CFR 24.404(c)] |
| 02.00 | Excess, Rescinded Route, Design Change, and Suspended Route Relocation Procedures |
| 02.01 | Land Acquired as Excess |
| 02.02 | Rescinded Route or Design Change - Excess Land |
| 03.00 | Rehabilitation or Demolition Relocation Procedures |
| 03.01 | Entitlements |
| 03.02 | Types of Displacement |
| 03.03 | Charging Procedures |
| 04.00 | Suspended Routes |
| 05.00 | Temporary Relocations |
| 05.01 | Temporary Residential Relocations due to Nighttime Construction Work |

10.00.00.00 - RELOCATION ASSISTANCE

10.01.00.00 - GENERAL

10.01.01.00 Relocation Assistance Program

This chapter covers procedures for implementing the Relocation Assistance Program (RAP) in accordance with applicable laws, regulations, and policies. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (as amended) and Title 49 Code of Federal Regulations (CFR) Part 24 serve as the basis for the policies and procedures of the California Department of Transportation (Department).

10.01.01.01 Purpose

The purpose of RAP is to ensure that persons displaced as a result of a state highway project are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and to ensure that the Department implements the Uniform Act and 49 CFR 24 in a manner that is efficient and cost effective.

All relocation services and benefits are administered without regard to race, color, national origin, or sex in compliance with Title VI of the Civil Rights Act (42 U.S.C. 2000d, et seq.).

10.01.02.00 Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970 (as amended)

Public Law 91-646, which is known as the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act), became effective January 2, 1971. For the first time, the United States had adopted measures to be uniformly applied whenever the federal government acquired real property or when property acquisition involved the use of federal funds.

The Uniform Act set minimum standards of assistance and compensation for relocation advisory and financial assistance, and established basic standards and requirements for appraisal and acquisition to be followed in acquiring real property.

10.01.02.01 Title 49 Code of Federal Regulations Part 24 (49 CFR 24)

The CFRs provide the rules that must be followed in order to comply with the law. 49 CFR 24 ensures Uniform Act compliance. Its purpose is:

To provide for uniform and equitable treatment of persons displaced from their homes, businesses, or farms by Federal and federally assisted programs and to establish uniform and equitable land acquisition policies for Federal and federally assisted programs.

Compliance with the Uniform Act is required for all projects on the State Highway System (regardless of funding source), all federal-aid projects, and all Local, Streets and Roads (LS&R) projects (also variously referred to as "Local Grant," "Local Entity," "Local Assistance," or "Off-System" projects. See 17.01.01.04).

The policies and procedures in this chapter will ensure that all persons impacted by a public project are treated fairly and equitably. Further, the uniform application of these policies and procedures will prevent fraud, waste, and abuse of the Department's resources. Periodic reviews of delegations, quality, and compliance are conducted to ensure full compliance [49 CFR 24.4(c)].

10.01.03.00 **Displacements**

Any person, household, business, farm, or nonprofit organization displaced by a public project is entitled to relocation benefits if they are in occupancy of the property being acquired at the time of the First Written Offer (FWO). Persons and entities displaced by a project and determined to be eligible for benefits are classified as a “displacee.” The only exception is the “Non-Occupant Owner” (10.05.13.00).

In some cases, the occupants of the property to be acquired may need to relocate prior to the FWO. The Region/District may issue a Notice of Intent to Acquire (NIA) to the owner-occupants to preserve their relocation benefits (10.01.07.01).

The amount and type of benefits will vary depending upon the type and length of occupancy (Table 10.01-A).

10.01.03.01 **Displaced Person [49 CFR 24.2(g)]**

The term “displaced person” (or displacee) means any person who moves from the real property or moves his or her personal property from the real property as the direct result of:

- A written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project.
- A written notice of intent to acquire, or the acquisition, rehabilitation, or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under the Uniform Act applies only for purposes of obtaining relocation assistance advisory services under 49 CFR 24.205(c), and moving expenses under 49 CFR 24.301, 24.302 or 24.303.

This includes persons who occupy the real property prior to its acquisition, but who do not meet the length of occupancy requirements of the Uniform Act (10.01.03.04).

10.01.03.02 **Persons Not Displaced**

Persons not considered “displaced” for purposes of obtaining relocation benefits are those who:

- (1) Move before the initiation of negotiations [49 CFR 24.403(e)] unless the Region/District issued a Notice of Intent to Acquire.
- (2) Initially entered into occupancy of the property after the date of its acquisition for the project.
- (3) Occupied the property for the sole purpose of obtaining assistance under the Uniform Act. (The burden of proof is on the Region/District RAP Senior).
- (4) Are not required to relocate permanently as a direct result of a project as determined by the Region/District DDC. This can be because it is a temporary easement or because the partial acquisition does not require they relocate from the remainder. However, if the remainder has been determined to be an Uneconomic Remnant [49 CFR 24.2(w)], then the occupant on the property is considered a displacee.
- (5) After receiving a Notice of Eligibility, are notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Region/District agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility.
- (6) Retains the right of use and occupancy of the real property for life, or some other fixed term, following its acquisition by the Department.
- (7) Are not lawfully present in the United States and who have been determined to be ineligible for relocation benefits in accordance with 49 CFR 24.208. The term “citizen,” for purposes of this part, includes both citizens of the United States and noncitizen nationals. The term “State” refers to any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or a political subdivision of any of these jurisdictions.

Additionally, owners who sold their property to the Department on a voluntary (or donated) basis or when the Department (or any of its agents) did not have the authority to condemn the property are not entitled to relocation benefits [49 CFR 24.2, 49 CFR 101 (1) and (2)]. However, the displacement of a tenant on real property that was acquired by the Department on a voluntary, donated, or without the authority of eminent domain, is entitled to relocation benefits (49 CFR 24.210, 24.108 and Subpart E).

There are circumstances where the acquisition of real property takes place without the intent or necessity that an occupant of the property be permanently displaced. Because such occupants are not considered “displaced person” under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, a tenant-occupant of a property will not be displaced, but is required to relocate temporarily in connection with the project. The temporarily occupied housing must be decent, safe, and sanitary, and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation (10.10.05.00).

Any person that disagrees with the Department’s determination that he or she is not a displaced person may file an appeal in accordance with 10.09.00.00.

10.01.03.03 **Tenured Occupants**

Tenured occupants are those occupants that meet the minimum occupancy requirement for full benefits. They are:

- 180-Day Owner-Occupant - occupants of the household who have lived in AND owned the residence for at least 180 days immediately prior to the FWO.
- 90-Day Owner-Occupant - members of the household who have occupied AND owned the residence for at least 90 days immediately prior to the FWO, but less than 180 days.
- 90-Day Tenant - members of the household who have occupied the residence that is owned by someone else, and paid rent to that person for at least 90 days prior to the FWO.

And

- Business, Farms, and Nonprofit Organizations that occupy the property on the day of the FWO.

10.01.03.04 **Non-Tenured**

Non-Tenured occupants are those occupants that do not meet the minimum occupancy requirement, but may still be entitled to some benefits. They are:

- Less than 90-day occupant - a tenant or an owner who has not lived in the residence for at least 90 days, but is there at the time of the FWO.
- Post-Offer occupant - a tenant or an owner who moves into the residence after the FWO.

And

- Business, Farms and Nonprofit Organizations that occupy the property after the FWO.

Non-Tenured occupants must be in occupancy on the day the Department obtains control of the property (Close of Escrow, Effective Order of Possession, or Effective Right of Entry) in order to receive monetary benefits (e.g., moving for residential and nonresidential, replacement housing payments for residential). Replacement Housing Payments (RHP) for residential occupants are based on their income under Last Resort Housing Provisions. Non-Tenured occupants are always entitled to Advisory Assistance.

Anyone who moves into the residence after the date the Department obtains control of the property is not entitled to benefits under the Uniform Act.

10.01.03.05 **Unlawful Occupancy (49 CFR 24.2)**

Unlawful occupants are **not** entitled to relocation benefits. Unlawful occupants are considered to be:

- Squatters - someone who occupies the property to be acquired but without the owner's permission.
- A person who occupies the property to be acquired that is owned by another, and has received an Eviction Notice or other court action to cause the property to be vacated.

Per 49 CFR 24.206 "Eviction for Cause" is any person who occupies the real property and is determined to be in unlawful occupancy on the date of the FWO, is ineligible to receive relocation payments and advisory assistance. A person is determined to be unlawful if:

- (a) The person received an eviction notice prior to the FWO and, as a result of that notice is later evicted; or
- (b) the person is evicted after the FWO for serious or repeated violation of material terms of the lease or occupancy agreement; and
- (c) the eviction was not initiated by the owner for the purpose of denying the occupant the right to receive relocation benefits.

10.01.03.06 **Constructive Occupancy**

To qualify an occupant for replacement housing payments, the dwelling must be the displacee's primary residence. (Payment of moving costs does not require occupancy.)

Where the cause of the displacee's absence is temporary, displacee shall be considered in occupancy. For example, the dwelling is maintained as principal residence, but displacee is:

- (1) temporarily employed in another location,
- (2) in the hospital,
- (3) on vacation,
- (4) on temporary military duty, or
- (5) not able to occupy because of a major disaster.

Displacee can be considered to be in "constructive occupancy" provided that another party has not established eligibility during displacee's absence.

Cases of constructive occupancy that differ substantially from examples listed above or cases where another party has occupied property and become eligible during the absence must be decided on an individual basis and be fully documented.

| Occupancy Type and Time | 180-Day Owner-Occupant | 90-Day Occupant | Non-Tenured | |
|---|---|---|--|------------------------|
| | | | Less than 90-Day Occupant | Post-Offer Occupant |
| | | | Tenant or Owner | |
| Conditions | Eligible to receive payments upon vacating displacement property at any time after First Written Offer | | Must be in occupancy at close of escrow or date of possession | |
| Advisory Assistance | Yes | Yes | Yes | |
| Moving Expenses | Yes | Yes | Yes | |
| Replacement Housing Payments | | | | |
| A. Price Differential (PD), Mortgage Differential (MD), and Incidental Expenses (IE). <i>Limited to \$22,500 before LRH rules apply.</i> | Yes <i>LRH - deposit funds into escrow</i> | No | No | |
| B. Rent Differential (RD). <i>Requirement for an Income Certification.</i> <i>Limitations</i> | Yes (in lieu of PD, MD, IE) No <i>RD based on economic rent, but cannot exceed the calculated PD</i> <i>If PD is zero, RD is limited to \$5,250.</i> | Yes <i>Optional - at time of determination</i> | Yes (if 30% of income is less than comparable replacement rent including utilities) <i>Mandatory - at time of determination</i> | |
| OR- | | | | |
| C. Down Payment (DP) Including Eligible Incidental Expenses <i>Limitations</i> | N/A | Yes <i>20% Down Payment plus all non-recurring costs, up to the amount of the RD</i> | Yes If RD is zero, DP is zero. <i>20% Down Payment plus all non-recurring costs, up to the amount of RD</i> | |

Table 10.01-A - Explanation of Residential Benefits by Occupancy

Cases of constructive occupancy that involve the right to occupy a property prior to initiation of negotiations must also be decided on an individual basis and be fully documented. Such cases are submitted through HQ R/W to FHWA for review. Proof of the right to occupy property can include a written agreement such as a lease, canceled checks, testimony of witnesses, or partial occupancy such as the storage of property.

10.01.03.07 **Consequential Displacement**

Consequential displacement is displacement of a person, business, farm, or nonprofit organization from the unacquired remaining property as a direct result of acquisition for the proposed project.

Where only a portion of a property is acquired for public purposes, occupants are eligible for relocation payments only insofar as the Region/District DDC determines that their displacement is a direct result of the acquisition. Care must be taken to avoid creating relocation assistance obligations, expressed or implied, by premature or unnecessary delivery of RAP packages or information.

The benefits for which an approved consequential displacee is eligible are determined by the category of occupancy in which displacee falls.

Examples of possible consequential displacements are:

- Rearrangement of remainder property causes displacement of occupants; e.g., acquisition of a portion of a mobile home park or similar operation that causes displacement on remainder in order to restore functional utility by rearranging interior roads or buildings.
- Acquisition of a significant portion of parking area in a business development causes the business to suffer a substantial decrease in net income. Decrease in income must specifically result from reduced parking and not from other causes.
- A business operation (such as a lumberyard) moves from the part taken to the unacquired remainder. Payment for cost of reasonable and necessary rearrangement of personal property on remainder to accommodate the move is proper.
- Residential or business occupants on remainder are left without utility connections as a result of partial taking. Since the Department cannot force owners to reestablish utility connections, occupants can be considered displaced and eligible for applicable benefits.
- Acquisition of a business causes move from unacquired residence because the business and residence need to be in close proximity. In this case, the District must also find that replacement business location is not available within reasonable distance of acquired property. (Since the Department will relocate a person whose residence is acquired to a comparable location, a finding of consequential displacement of business to be near owner's residence may not be made.) Applicable benefits in this case are limited to reimbursement of moving expenses and relocation advisory assistance.
- A business that operates at two sites, one of which is acquired. If the operation at the acquired site cannot relocate within a reasonable proximity of the second site, the Agent must determine if the operation of the unacquired site is detrimentally impacted because the two sites were linked by either operation or reliance.

Whenever an appraisal or acquisition settlement indicates taking of access rights will result in substantial impairment of access to a property, the District will investigate to see if any consequential displacement would occur.

Frequently the need to relocate a business may not be obvious until the relocation assistance stage. The relocation of a business may be necessary even though there are no damages to the real estate and the appraisal does not indicate a business displacement.

The request from the occupant to be considered as a displacee may come through the appraiser, acquisition agent, or RAP Agent. As soon as the request is made, the RAP Senior should discuss the matter thoroughly with the Appraisal and Acquisition Seniors and then submit the matter to the R/DDC for consideration. The request should include a recommendation from the Region/District Project Delivery Seniors. The displacee should be advised in writing of the R/DDC's determination.

If it is denied, the occupant's right to appeal should be explained fully. All appeals on a determination of consequential displacement must be heard by the Statewide Appeals Board (10.09.07.00).

When design changes result in revised settlement offers that cause consequential displacement, the date of the revised offer is used to determine eligibility. Explanations to potential displacees must be stated so they are aware that potential eligibility cannot be firmly determined until after settlement is reached. If settlement is ultimately based on a plan that will not cause displacement from remainder, the occupant must be immediately informed that there is no eligibility for RAP benefits.

10.01.03.08 **Persons Not Lawfully Present in the United States**

The phrase "person not lawfully present in the United States" means someone who is not "lawfully present" in the United States as defined in 8 CFR 103.12 and includes:

- (1) A person present in the United States who has not been admitted or paroled in the United States pursuant to the Immigration and Nationality Act, and whose stay in the United States has not been authorized by the U.S. Attorney General, and
- (2) A person who is present in the United States after the expiration of the period of stay authorized by the U.S. Attorney General, or who otherwise violates the terms and conditions of admission, parole, or authorization to stay in the United States.

See Sections 10.01.10.00 through 10.01.10.06.

10.01.04.00 **Promissory Estoppel**

The Doctrine of Promissory Estoppel holds that a promisor is held to a promise if the following conditions are met:

- A promise is made, representing a material fact that something would happen, normally to the benefit of the promisee.
- The promisor could reasonably expect to induce a substantial action on the part of the promisee. In other words, the representation made was such that a person would reasonably believe it.
- The promisee actually takes a substantial action in reliance on the representation, and the promisee substantially changed their position in reliance on the representation.
- A monetary loss, one that is actually suffered or one that will be suffered by the promisee, can only be avoided by enforcement of the promise made.

10.01.05.00 **Certificates of Occupancy**

All persons occupying property to be acquired for a public project must certify to the Department that the displacement property is their primary residence. The Certification requires they list the number of occupants, the length of time the persons have occupied the residence, their status as owner or tenant, and their U.S. Residency status. This is accomplished by completing the Certificate of Occupancy and Receipt of Relocation Benefits (RW 10-25) for owners, the Owner's Certificate of Tenants (RW 10-1), and/or the U.S. Residency Certification (RW 10-44). The information on these forms will determine the occupants' eligibility and status as tenured or non-tenured.

Each form must be acknowledged by the Agent that interviewed the occupants who completed the form.

If an owner cannot provide or refuses to provide necessary information on tenant and lessee occupancies, the RAP Agent shall canvass the property and secure the information directly from the occupants. (Other reasonable methods such as regular or certified mail may also be used.) In such cases, length of prior occupancy may be documented from sources such as rental receipts, canceled checks, and utility bills.

Generally, the same relocation census data (occupancy dates, number of occupants, etc.) required of owners is required for tenants and lessees. At the first personal contact with tenants and lessees, the RAP Agent will confirm any census data (plus rent payments and utility costs) provided by the owner and obtain any missing information. Variations shall be resolved and explained in the RAP Diary.

10.01.06.00 **Moves Prior to First Written Offer**

The Agent shall advise initial owner-occupants and initial tenant-occupants that relocation payments cannot be made until the State has made a first written offer to acquire the property, except as otherwise provided for in connection with a Notice of Intent to Acquire. Occupants must be made aware that they may lose RAP eligibility if they move before the first written offer.

10.01.07.00 **Initiation of Negotiations**

The term “initiation of negotiations” is the day the Acquisition Agent presents, in writing, the amount of just compensation (determined to be fair market value) to acquire the property for a public project, defined as the First Written Offer (FWO) [49 CFR 24.2(k)].

However, if the Department has issued a Notice of Intent to Acquire, then the date of the letter becomes the date of the FWO.

10.01.07.01 **Notice of Intent to Acquire**

In rare cases, an owner-occupant may need to relocate prior to the FWO. That person should contact the Region/District RAP Senior to determine the time frame for the FWO and if the occupants should be issued a Notice of Intent to Acquire to preserve their relocation benefits.

Issuing a Notice of Intent to Acquire informs the owner-occupants that the Department will be acquiring their property for a public project, and that they can relocate prior to the initiation of negotiations without jeopardizing their relocation benefits.

Notice of Intent to Acquire to preserve relocation benefits cannot be given to tenants or lessees.

10.01.07.02 **Move Prior to Control of the Property**

Any tenured occupant may move from the property to be acquired after the FWO and receive full benefits. However, to prevent non-tenured occupants from moving in and possibly receiving benefits, the Region/District should rent the property back from the owner and initiate proceedings to complete the acquisition (including condemnation action).

Non-tenured occupants must be in the property at the time the State obtains control in order to receive any relocation benefits (Table 10.01-A).

10.01.08.00 **Relocation Benefits**

Eligible displacees may be entitled to Advisory Assistance, Moving Costs, and Replacement Housing Payments.

- Advisory Assistance - available to everyone who occupies the real property acquired by the Department.
- Moving Costs - reimbursement for actual, reasonable and necessary expenses. Available to everyone who must move their personal property from the real property acquired by the Department.
- Replacement Housing Payments - available for residential occupants based on type and length of occupancy at the time the Department initiates negotiations to acquire the real property.

10.01.08.01 **Advisory Assistance [49 CFR 24.205(c)]**

The Uniform Act requires that the Department establish a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 et seq.), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described below.

The specific goal of the Advisory Assistance benefit is to minimize the hardships people might experience in adjusting to their relocation. This can be done by providing counseling, advice as to other sources of assistance that may be available, information on Federal and State housing programs, disaster loans, and other programs (e.g., SBA, FHA, HUD).

10.01.08.02 **Specific Advisory Services**

Relocation assistance advisory services are provided primarily to assist:

- Persons in relocating to “decent, safe, and sanitary” (DS&S) housing that meets their needs and is within their financial means.
- Business and farm operators in finding suitable replacement locations to continue operations.

In addition, Advisory Assistance is intended to emphasize that if the comparable replacement properties are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement properties not located in such areas.

The preferred method is for the RAP Agent to conduct a personal interview with each occupant to determine the relocation needs and preferences of each person being displaced, and explain their possible relocation benefits. If personal contact cannot be made, the Agent shall document the file to show that conscientious efforts were made and explain why such efforts were unsuccessful.

The RAP Agent is responsible for providing current and continuing information throughout the relocation process, including:

- an explanation of eligibility requirements for relocation payments and the appeal process
- translation services to properly explain the RAP Program to non-English speaking persons
- information on the availability, purchase prices, and rental costs of comparable replacement dwellings and/or businesses
- assurance that no one will be required to move unless at least one comparable replacement dwelling is made available
- an address, in writing, of the specific comparable replacement dwelling used to establish the maximum replacement housing payment
- inspection criteria that will be used to determine if the replacement property meets the DS&S standards [49 CFR 24.2(a) and (f)]
- transportation for all persons, especially the elderly and handicapped, to inspect housing to which they are referred

- assistance in locating and obtaining a replacement property (residential, business, farm operation, or nonprofit organization), including assistance in completing required applications and other forms
- assistance in completing the Department's claim forms, and if necessary, a request for a Relocation Assistance Appeal

10.01.08.03 **Eligibility for Advisory Assistance**

Services shall be offered to all persons occupying property:

- acquired or to be acquired
- immediately adjacent to the acquired real property if the Department believes they may have difficulty adjusting to changes resulting from the acquisition
- that was acquired, and choose to relocate their adjacent residence, business, or farm operation
- after it was acquired by the Department, when such occupancy is permitted by a short-term rental agreement or an agreement subject to termination when the property is needed for a program or project

No services shall be offered to persons or businesses not certified as lawfully present in the United States.

10.01.08.04 **Moving Costs**

Any occupant who qualified as a "displacee" is entitled to payment of their actual moving and related expenses for all personal property or any property not acquired as real property.

The payment varies between residential and nonresidential occupants. See Section 10.04.02.00 for residential and 10.05.04.00 for nonresidential.

10.01.08.05 **Replacement Housing Payments (RHP)**

A residential displacee is eligible for an RHP that may assist them in relocating to a replacement property. The type and amount of the payment vary between tenured and non-tenured occupants, and between owners and tenants.

- 180-Day Owner-Occupants may be entitled to an RHP which is comprised of a PD, an IE, and an MD (10.04.07.01).
- 90-Day Occupants and Non-Tenured Occupants (owner or tenant) may be entitled to an RD (10.04.15.06) or a DP (10.04.25.00). Non-Tenured Occupants are only entitled to an RHP if the household income is less than 30% of the probable replacement rent including utilities.

The amount of the PD and the RD is determined by preparing a Replacement Housing Valuation (RHV) (10.06.00.00) that ensures there is a replacement property available on the market that is comparable to the property being acquired by the Department, and meets the DS&S standards established in the Uniform Act (10.06.05.00).

Additionally, the residential occupants must meet certain criteria in order to receive the full amount of their calculated RHP:

- Occupy a DS&S residential dwelling, within one (1) year of the eligibility date (10.08.02.00).
- Spend at least the amount of the comparable replacement property (as determined by an approved RHV) on the actual replacement property.
- Submit a claim for their eligible RHPs within 18 months of the eligibility date (10.08.03.00).

10.01.08.06 **Relocation Payments**

Neither moving or RHPs are payable after death of the displacee, unless there has been some reliance on the part of the displacee's family or business operation.

Relocation Housing Payments are limited to \$22,500 for 180-day owner-occupants and \$5,250 for 90-day/less than 90-day occupants (tenant or owner) before consideration must be given to Last Resort Housing (LRH).

Moving and RHP payments are not subject to income tax, nor should they impact a displacee's eligibility for social security.

49 CFR 24.209 specifically states that relocation payments shall not be considered as income for the purpose of the Internal Revenue Code, nor shall the payments be considered in determining the eligibility of any person for assistance under any provision of federal law (e.g., social security benefits), except a federal law providing low-income housing assistance.

10.01.09.00 **Relocation Assistance Program Package**

The RAP package is a collection of informational material given to eligible displacees to explain RAP. Although content will vary among residential and nonresidential occupants and between tenured and non-tenured, the material must include:

- **Standard Relocation Brochure** - residential or nonresidential, as appropriate.
 - **Notice of Eligibility** - stating kinds and amounts of benefits the specific displacee may be eligible to receive.
 - **U.S. Residency Certification Form** (signed in accordance with 10.01.10.00).
 - **Certificate of Occupancy** - appropriate form or forms.
- OPTIONAL INFORMATION:**
- **Return-addressed Postal Card** - to request claim forms and relocation assistance.
 - **Other Information** - pertinent to the specific type of eligibility involved; e.g., "Fair Housing" pamphlets and Small Business Administration loan information.

The Acquisition Agent delivers the RAP Package at the time of the FWO to the owners (or by a RAP Agent who accompanies the Acquisition Agent). The RAP Agent delivers the RAP Package to tenants within 14 days of the FWO to the owner.

IMPORTANT: The RAP package must be delivered and an offer of relocation assistance made to initial tenants and lessees within 14 days of the FWO, either in person or by certified mail. If delivery is by certified mail, the Agent must make a personal call to review the program and answer questions within 30 days following the FWO.

10.01.10.00 **Certification of U.S. Residency Requirement [49 CFR 24.208(a) and (b)]**

Each person seeking relocation payments or relocation advisory assistance shall, as a condition of eligibility, certify:

- (1) In the case of an individual, that he or she is either a citizen or national of the U.S., or a person who is lawfully present in the U.S.
- (2) In the case of a family, that each family member is either a citizen or national of the U.S., or a person who is lawfully present in the U.S. The certification may be made by the head of the household on behalf of other family members.

- (3) In the case of an unincorporated business, farm, or nonprofit organization, that each owner is either a citizen or national of the U.S., or a person who is lawfully present in the U.S. The certification may be made by the principal owner, manager, or operating officer on behalf of other persons who have an ownership interest.
- (4) In the case of an incorporated business, farm, or nonprofit organization, that the corporation is authorized to conduct business within the U.S.

The certification shall indicate whether such person is either a citizen or national of the U.S., or a person who is lawfully present in the U.S.

Certification will be made on RW 10-44 and must be in the RAP File prior to giving relocation advisory assistance and prior to approval of any claims. It should be obtained at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

10.01.10.01 **Benefit Computation [49 CFR 24.208(c)]**

In computing relocation payments under the Uniform Act, if any member of a household or owner of an unincorporated business, farm, or nonprofit organization is determined to be ineligible because of a failure to be legally present in the U.S., no relocation payments may be made to him or her. Any payment for which such household, unincorporated business, farm, or nonprofit organization would otherwise be eligible shall be computed for the household, based on the number of eligible household members and for the unincorporated business, farm, or nonprofit organization, based on the ratio of ownership between eligible and ineligible owners.

10.01.10.02 **Validity of Certification for U.S. Residency [49 CFR 24.208(d)]**

The RAP Agent shall consider the certification that is signed under penalty of perjury by the displacee to be valid. Documentation will not be requested from the displacee.

If the person signing the Certification for U.S. Residency is unsure if their status qualifies for purposes of relocation benefits, the RAP Agent must refer them to the Immigration Naturalization Service (INS) for clarification. The RAP Agent must retain the Certification until INS has verified the person and status, then the person can request the RAP Agent return the form for execution. As a matter of practice, the RAP Agent should advise the person in writing, that receipt of the Certification would be required before relocation benefits can be discussed. If no information is received from the person, the RAP Senior should investigate and follow up with a letter advising the person that a nonresponse or an unexecuted Certification within 60 days will be considered as the person's admission that they are not present in the U.S. legally, and thus they will be denied relocation benefits.

10.01.10.03 **Documentation [49 CFR 24.208(e)]**

Since the certification is signed under penalty of perjury, it will not be necessary to verify the validity of the information provided by the displacees. However, should the displacee request assistance in determining if all occupants are legal residents, the agent can provide information on what documentation is considered proof of legal status. The displacee can provide any documentation they have on hand and ask the Agent to determine if it meets the requirements established by INS (see Exhibit C on the R/W RAP Intranet). If the displacee has documentation that is not on the list, they can pursue the matter directly with INS to determine their legal status, and, once their legal status is verified by INS, the displacee can sign the Certification. Documentation will not be requested from the displacee unless the displacee has volunteered the information to ensure they meet the requirements. The certification will be kept in the RAP file, and the RAP diary will note that the Agent obtained a signed document. The diary should also note if the number of legal occupants is less than noted in previous documents (e.g., Occupancy Data Sheet, Certification of Occupancy).

10.01.10.04 **Denial of Benefits [49 CFR 24.208(g)]**

No relocation payments or relocation advisory assistance shall be provided to a person who has not provided the certification described in this section or who has been determined to be not lawfully present in the U.S., unless such person can demonstrate to the displacing agency's satisfaction that the denial of relocation benefits will result in an exceptional and extremely unusual hardship to such person's spouse, parent, or child who is a citizen of the U.S., or is a person lawfully admitted for permanent residence in the U.S.

Persons not lawfully present in the U.S. are not eligible for relocation benefits or advisory assistance.

10.01.10.05 **Return of Payment**

The claim form for relocation benefits signed by the displacee shall state that only lawful U.S. residents are entitled to relocation benefits.

If within 18 months after the following dates the Department determines that the displacee's certification was invalid, the displacee will be contacted and advised that all relocation payments must be returned.

- 1) For tenants, the date of displacement.
- 2) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

See 10.08.13.00 for information on how to process a request for the return of the payment.

10.01.10.06 **Hardship Situations**

In extremely rare circumstances, the denial of benefits to an uncertified occupant may create a severe hardship on the remaining certified occupants. The eligible occupants may submit a claim for benefits for the uncertified occupant and request that the denial of the benefits be reconsidered because of their particular situation. In order to claim benefits, the certified occupant must demonstrate to the Department's satisfaction that denial of the additional benefits to the uncertified occupant will result in an extreme hardship to the remaining occupants, particularly the spouse, parent, or child who is a legal resident. The Region/District DC R/W or designee will determine if the displacee's situation is a hardship. Hardship is defined as:

- 1) Significant and demonstrable adverse impact on the health or safety of the spouse, parent, or child; or
- 2) Significant and demonstrable adverse impact on the continued existence of the family unit of which the spouse, parent, or child is a member.

Note: Income alone will never be considered as the sole criteria in determining hardship.

10.01.11.00 **Coordination of Right of Way Activities**

As mandated by the 49 CFR 24.250(d), all relocation activities must be coordinated with project work and other displacement causing activities (e.g., appraisals, acquisition, and property management).

To ensure that persons displaced receive consistent treatment, and the duplication of functions is minimized, the following sections explain the various roles and responsibilities of FHWA, HQ R/W, and the Region/District functional Senior for Appraisals, Acquisition, Property Management, and RAP.

10.01.11.01 **Responsibilities of Headquarters Right of Way**

Right of Way (HQ R/W) Project Delivery Office Chief, through the Senior Right of Way Agent for Relocation Assistance:

- Develops policy.
- Establishes procedures.
- Conducts Quality Enhancement Joint Reviews (QEJR).
- Evaluates Region/District performance.
- Provides statewide continuity and leadership, technical assistance for solving unusual problems, and training programs.
- Acts as liaison with the Federal Government, other states, and other State agencies.

10.01.11.02 **Responsibilities of Region/District**

The Region/District Division Chief, through the Senior Right of Way Agent for Relocation Assistance:

- Plans and provides all relocation services and payments.
- Provides staff.
- Provides funds.
- Sets project priorities.
- Trains staff.

(See Region/District Senior Expectations - R/W RAP Web page.)

(See Section 10.01.13.00 for specific activities related to managing the RAP Branch.)

10.01.11.03 **Region/District Functional Responsibilities**

All R/W Agents who have public contact should have sufficient knowledge of RAP to explain the benefits and how to obtain them. At the very least, they should know whom displacees should contact to obtain this information.

Anyone who contacts occupants of property that might be acquired by the Department should ensure the following message is conveyed (preferably in writing):

“You may be eligible for possible relocation payments if you are in occupancy of the property at the time the Department presents its first written offer. You should contact the Right of Way Office immediately if you plan to move before receiving a written offer to acquire your property.”

10.01.11.04 **Responsibility of the Region/District Appraisal Branch**

- Give accurate basic relocation information to all potential displacees encountered during the appraisal process.
- Complete the Parcel Occupancy Data Sheet (RW 7-2) at the first meeting or contact with the owner when a primary or alternate appraisal indicates a displacement of people, business, or personal property. Provide the form to the RAP Senior within 24 hours of the initial inspection of the property.
- Inform the RAP Unit of any special relocation problems involving either people or personal property.
- In situations involving appraisal of commercial, industrial, or other properties that include valuation of machinery, equipment, fixtures, and miscellaneous items of realty, provide information on these items as part of the appraisal report in accordance with instructions in the Appraisal Chapter.
- Require that goodwill appraisers indicate in the goodwill appraisal the items and amounts that are or might be a part of a reestablishment or an in-lieu relocation assistance payment.
- Complete a Machinery and Equipment appraisal of trade fixtures and other personalty that will be acquired by the Department. All personalty not acquired must be relocated, so it is imperative the Appraiser works closely with the RAP Senior to determine the appropriate classification of all personalty.

- Notify the RAP Unit of any alternate appraisal or damage element that could result in displacement of people or businesses not contemplated by primary appraisal or readily identified by reference to partial acquisition requirements.
- Show economic and/or actual rental rates for all improved properties in fair market value appraisal (see Appraisal Chapter). Show an unsupported estimate of fair rental rate (economic rent) in market value appraisal for all owner-occupied dwelling units.
- If the District has a policy of initially notifying displacees of monetary benefits under all replacement options, it may also require that supported economic rent for owner-occupied dwelling units be shown in market value appraisal. In these cases, the requirement for support of economic rent determination is the same as for tenant-occupied units.
- Make a determination of real property versus personal property (49 CFR 24.303). This is critical because all payments for moving and related expenses for displaced businesses relate to the moving of personal property. Neither the Uniform Act nor the implementing regulations provide payment for moving real property. The Uniform Act places the determination of real property under State law, and requires that all real property be appraised and acquired as part of the real estate being acquired.

10.01.11.05 Responsibilities of the Region/District Acquisition Branch

- At time of initiation of negotiations for the property, personally deliver a RAP Package (10.01.09.00) to each owner-occupant (90- or 180-Day) with whom negotiations are conducted and secure a receipt for each Package delivered.
- Explain RAP procedures and benefits to potential displacees using the RAP Package as a guide.
- Obtain a Certificate of Occupancy (RW 10-25) and the U.S. Residency Certificate (RW 10-44) from the owner-occupants.
- Secure a completed Owner's Certification of Tenants (RW 10-1) from owner of the property immediately when negotiations are initiated.

Note: None of the Certificates regarding occupancy need to be signed if it can definitely be established that no personal property will be moved and no relocation assistance payments will be paid. However, because RAP valuations are dependent on proper information, verification of size and composition of family is mandatory.

- Coordinate service of 90- and 30-Day Notices to occupants of properties with the service of the Order of Possession when the Department has initiated condemnation action.
- Ensure a Relocation Impact Document (probably a RIM) is requested when a request for early acquisition due to a hardship is received. Approval of the hardship is contingent upon review and approval of the RID by the Environmental Branch.

Provide the RAP Senior with the following information and documentation within two working days of receipt:

- | |
|---|
| <ol style="list-style-type: none"> 1. Certificate of Occupancy (RW 10-25). 2. United States Residency Certificate (RW 10-44). 3. Owner's Certification of Tenants (RW 10-1). If the owner or owner's agent refuses to provide the Owner's Certification of Tenants, contact the RAP Unit immediately. 4. Date the Department has control of the property (e.g., Close of escrow, effective Order of Possession, executed Order of Condemnation). 5. The final price paid to the owner (e.g., R/W Contract, Administrative Settlement, Stipulated Judgment). 6. List of all items purchased and/or paid to relocate in lieu of purchase, and any fixtures included in the appraisal but retained by the owner. |
|---|

The Acquisition Agent must work with the RAP Senior with the status of the negotiations on all properties, especially complex properties that will entail relocation of personal property or relocation of improvements pertaining to realty. The intent is to afford the RAP Unit an opportunity to become familiar with potential large scale business relocations prior to completion of acquisition and possible commencement of a move. An appropriate notation on Certificate of Occupancy or separate notice may accomplish this. The RAP Agent should be afforded an opportunity to accompany the Acquisition Agent to acquire property or otherwise be allowed to inspect property for the purpose of determining scope of potential relocation problem.

The Relocation Assistance Branch must work closely with the Legal Office handling any eminent domain actions in order to prevent global settlements that include relocation assistance payments. In the rare cases when the global settlement includes relocation assistance payments, FHWA will participate if the settlement states the amount of funds that would have been paid out in relocation assistance payments by category, and the RAP file clearly demonstrates that the displacee was advised that any deposit made in excess of the acquisition settlement (including goodwill, inventory, machinery and equipment) will be credited toward relocation assistance payments. Care must be taken to code the portion of relocation assistance payments appropriately because acquisition payment is subject to taxation and capital gains.

10.01.11.06 **Responsibilities of the Region/District Property Management Branch**

- Inform the RAP Senior, in writing within 24 hours of first knowledge, of vacation of State-owned property by any RAP eligible.
- Coordinate requests for 30- and 90-Day Notices with eviction proceedings (e.g., 30-Day Notice to Vacate, Three (3)-Day Notice to Quit) sufficiently in advance to ensure orderly relocation of all occupants.
- Inform all noneligible tenants occupying premises leased under Master Tenancy that they are not eligible for relocation assistance payments.
- Provide Title VI Survey Form RW 10-1, and Title VI Brochure to tenants of state-owned property.
- Coordinate sale of excess land or building improvements with RAP Senior to ensure that occupants receive required notices and any relocation payments due.
- Coordinate increase of rental rates with RAP Branch to ensure that increases for RAP-eligible occupants are in accordance with rental policy for residential rental rates. Increases in rental rates for 90-Day Occupants may drastically affect their RHP entitlements.
- Inspections of the real property just prior to or at the close of escrow to determine if the acquired items of realty are still on-site, and explain to displacees who will remain in occupancy that they are responsible for maintenance of the property until they vacate.

10.01.12.00 **Single Agent (\$10,000 and Under)**

The Single Agent (\$10,000 and Under) allows one agent to appraise and acquire parcels, usually partial acquisitions valued at less than \$10,000.

Occasionally, the Single Agent will encounter the need to relocate personal property from the part-take to the remainder, which requires a payment under the relocation assistance program. This may be a permanent relocation; or in the case of a temporary construction easement, a temporary relocation requiring a second move back to the original location after construction work is complete.

The move of the personalty is paid with the "Self-Move Agreement and Claim Form for Under \$10,000 Acquisition" (SMA \$10K), Form RW 10-47.

The document only needs to be completed when personal property such as a swing set, a cord of wood, the contents of a shed, or other personalty needs to be moved away from the property needed for the project. The Move Cost Finding in the SMA \$10K Form is completed in accordance with 10.05.10.00 regardless of whether the personalty is related to a business or a residence. The SMA \$10K Form should have sufficient room to list the minimal personal property being relocated plus perform the calculations for the time and equipment the displacee needs to move the property. If the need for the property is temporary in nature, e.g., a temporary construction easement for a soundwall, the displacee should be paid to move the personal property back upon notification by the agent. See 10.05.10.00 for the process to calculate the cost to move.

To expedite the relocation process in conjunction with the appraisal and acquisition process, this minimal relocation payment can be paid in advance of the move, but must be paid separate from the acquisition payment (which may be paid directly out of escrow). It is important to note the ownership of the personal property, since some residential and nonresidential sites are occupied by a tenant or lessee. However, the SMA \$10K process and form can still be used by the Single Agent who would then ensure payment for the realty is paid to the owner (nonoccupant) and payment for the relocation is paid to the occupant.

The SMA \$10K Form includes required clauses governing when the relocation must occur, the mandatory 90-Day notice, and liability clauses. Once the document is signed by the displacee (claimant) and the Single Agent (Right of Way Agent), it can be processed for payment.

The need to incorporate this form into the existing acquisition process is based on FHWA's requirement that acquisition and relocation activities be kept separate, and that no payment for relocation be included in an acquisition payment.

10.01.13.00 **Region/District RAP Branch**

The Region/District RAP Senior should ensure sufficient staff are assigned to the branch and that there is adequate time to spend with each displacee to ensure the appropriate level of advisory assistance is provided and that claims are processed timely.

RAP Seniors may also be responsible for the preparation of the Relocation Impact Documents (RID) and the R/W Planning Documents (10.02.00.00), and Replacement Housing Valuations (RHV) (10.06.00.00).

10.01.13.01 **Training**

Agents assigned to the Relocation Branch should receive adequate training before they have the responsibility to relocate any residential or noncomplex business displacee. Agents assigned to the more complex relocations (e.g., major commercial establishment) or ancillary activities (RHVs, RIDs, or public hearing presentations) should be at the Associate level, have several years of RAP experience, and have received the appropriate advanced training sessions.

The RAP Senior should ensure all staff have adequate training and experience to accomplish assigned tasks in a professional manner.

10.01.13.02 **Right of Way Certifications**

The RAP Senior must provide information to the Region/District functional unit responsible for finalizing the Right of Way Certification for state highway projects. The RAP Senior must verify that all displacees have vacated and that they were relocated in accordance with applicable Federal and State laws and procedural requirements. See Certification Chapter for a full discussion.

10.01.13.03 **Policy and Procedural Manuals**

The RAP Senior should ensure each RAP Agent has the current Relocation Assistance procedures outlined in the Relocation Chapter with Exhibits (especially 49 CFR 24, 10-EX-1) and Forms (with the capability to download the current form onto their computer system), along with any other written guidance and instructions.

The RAP Senior should also keep a stock of current Relocation Assistance Brochures (Residential, Business, and Mobile Home) for use at public hearings, public meetings, and the first RAP call.

Another important tool is the Right of Way Intranet Web site which has a RAP Web site with the newest information on policies, procedures, and interpretations. Agents should be encouraged to utilize this Web site throughout their relocation career.

Most importantly, the Senior Agent is responsible for reviewing the RAP Agent's work products and the parcel files to ensure they comply with all applicable laws and policies, and that the work is being done on time and in accordance with the project schedule.

10.01.13.04 **RAP File**

The RAP Branch must maintain a separate file for each parcel and for each entity (e.g., apartment, multiple households, sublessee) that is considered a displacee. A file should also be kept for each person that has been determined not a displacee because of their U.S. residency status, length of time in occupancy, unlawful status, or other reason. RAP Files are numbered with the parcel number and a subnumber to indicate the number of displaced units on the parcel. Review 6.02.03.00 on parcel numbering.

RAP File Parcel Numbering Example:

| | |
|---|-----------|
| Owner who has personal property on the site: | 123456-01 |
| Tenant who occupies the property: | 123456-02 |
| Second and separate household as determined by the agent: | 123456-03 |

The Parcel Occupancy Data Sheet initiates the RAP file; however, any previous correspondence to or from the displacee regarding RAP or their possible status should be included in the file as soon as it is created.

The RAP file shall contain the following information:

- RAP Diary - see below for further details.
- Certificates - of occupancy, of income, and of residency status.
- Correspondence - to and from the displacee or pertaining to the displacement, including Notices of Eligibility, Conditional Entitlements, and Notices to Vacate.
- Replacement Housing Valuation report for all residential units, or the Certified Inventory and photos for a nonresidential unit.
- Claims - copy of claim form and supporting documents.

10.01.13.05 **RAP Diary**

Standard Relocation Diary Form RW 10-3 shall be used to maintain a complete and legible diary that can be clearly reproduced. Each diary entry must be entered in pen or typed. Preprinted diaries or diaries maintained in a word processing program are acceptable documents. The use of lead pencils and felt pens should be avoided. Each diary entry must be dated and signed, not initialed.

The following are mandatory entries that will ensure a complete chronological account of the relocation activity:

- Date case was assigned to RAP Agent.
- Date, status, and pending required action when transferred from Agent to Agent.
- Date and place of each personal contact, list of persons present, and particulars of the discussion.
- Date and particulars of all significant phone calls.
- Date of first RAP Call, including delivery of the RAP Package, and a statement that the relocation program was explained and assistance was offered.
- Amounts of relocation payments offered. Copies of benefit letters delivered or mailed are included in the file.
- Claimant's response to offer of assistance (accepted or refused) and relocation intentions, if known.
- Date claim forms were delivered and kinds and amounts of payments involved.
- Date payment amounts are reviewed. If revised, the date claimant was advised of change in entitlement and amounts involved.
- An entry to the effect that replacement housing or rental replacement housing valuation was current as of date of vacation. Case file will contain written backup that valuation is current.
- Addresses and prices of replacement properties offered to displacee and methods used to transmit information.
- Dates correspondence or documents were received or transmitted.
- Delivery dates of official notices, such as 90-Day Notice.
- Diary entry when a moving claim is processed indicating circumstances of vacation; e.g., voluntary self-relocation, eviction, subject to 90- or 30-Day Notice, advisory assistance used.
- Relocation Assistance Program Senior sign-off for closed files (10.01.10.17).

Relocation diaries are confidential and should not be provided to the displacee or any other parties. However, during eminent domain actions or a relocation assistance appeal, diaries in whole or in part can be requested by the displacee, an attorney, or an interested party. Prior to providing copies of any diaries, the agent should obtain approval from the local Legal Office. (See 10.01.13.09.)

10.01.13.06 **Records**

All Relocation Parcel Files must be maintained in sufficient detail to demonstrate compliance with 49 CFR 24.9(a). The files must be retained in the region/district office for at least three (3) years after the latter:

- When each displacee receives the final relocation payment to which they are entitled, or
- The final voucher for construction is submitted (23 CFR, Part 17, Section 17.5).

10.01.13.07 **Tickler Files**

The RAP Senior must maintain a database or tickler system to assure, among other things, that all potential displacees are notified prior to the expiration date of any period in which they must:

- Occupy DS&S housing.
- File a claim.
- File an appeal.

All notices should provide ample time for displacee to act. The tickler file will also provide a reminder to make a mandatory six (6)-month follow-up call.

It is strongly suggested that the Agent send the displacee a letter detailing time periods and criteria to receive their full entitlements at the time they vacate the state-acquired property.

Time constraints for purchasing and occupying replacement dwelling vary for owners and tenants. See Section 10.08.02.00 for a detailed explanation of the various time constraints for purchasing or occupying replacement properties and/or filing a claim.

The District may approve time extensions for residential owners and tenant-occupants for good cause.

10.01.13.08 **RAP File Closeout**

The Senior Right of Way Agent in charge of the RAP Unit shall review every closed relocation case file in a timely manner to determine that:

- All benefits were fully paid.
- Certified Escrow Closing Statement was reconciled with amounts the Department placed into escrow.
- Supporting payment documentation was placed in the file or adequate diary entries were made to support nonpayments.
- Payments were made in a timely manner.
- Relocation assistance advisory service was offered and given, if requested.

The RAP Senior completes the file closeout by signing the front page of the diary, certifying to its adequacy. The Senior should note and correct any inadequacies and give appropriate instructions to ensure future compliance.

The reviewing RAP Senior must not certify the adequacy of any case file in which they have personal knowledge or relationship with the displacees, or if they were the RAP Agent for any significant period of time. In these instances, another Senior or Supervising Right of Way Agent must review the file.

10.01.13.09 **Confidentiality of Records [49 CFR 24.9(b)]**

Records maintained by the Department are confidential regarding their use as public information, unless applicable law provides otherwise.

The Public Records Act favors disclosure of public records unless there is a specific exemption against disclosure. Since the Act requires the Department to respond to a request for information within 10 days, even if the request falls within one of the exemptions, it is important not to ignore such a request. See “Public Access to Department Records and Personal Information” for additional information on Public Records Act requests.

Care must be taken to ensure that confidential information such as tax records, social security information, and Title VI surveys are not retained in the parcel file.

10.01.13.10 **Reports [49 CFR 24.9(c)]**

The Department submits an annual report to FHWA on its real property acquisition and displacement activities for the previous Federal Fiscal Year (FFY) October 1-September 30.

The HQ R/W Planning and Management Office prepares the Statistical Report Form for the 12-month period ending September 30 of each calendar year. The data is gathered from various tracking systems (e.g., IRWS, TRAMS, PMCS) and verified with the region/district RAP Senior prior to its submission to FHWA.

To ensure accurate reporting, the RAP Senior must maintain an independent database that tracks the number of residential and nonresidential displacees, the total of their relocation payments, the date of their move, and any funds paid that are classified as Last Resort Housing (LRH) (above the \$22,500 and \$5,250 limits).

10.01.13.11 **Accounting Information**

The RAP Senior is responsible for forwarding accurate RAP payment cost information to Accounting through Planning and Management (P&M).

To ensure all RAP payments are properly coded, the RAP Agent completes a separate Form RW 10-5, Relocation Cost Summary, for each claim scheduled for payment; e.g., moving expense claim and subsequent rent supplement payment.

Instructions for completing the form are printed on page 2 of the form. The need to provide the proper Review Indicator(s) on the form is of particular concern since this box is used to highlight certain payments where coding errors can occur.

10.01.14.00 **Employee Relocation Assistance Program (ERAP)**

A Department employee may receive his or her actual and necessary moving and relocation expenses, in accordance with Department of Personnel Administration (DPA) rules and limitations, whenever such employee is required to change their place of residence because of a change in assignment, promotion, or other reason related to duties with the Department.

Limited benefits may be extended to new hires as a recruitment incentive for individuals accepting employment from out of State.

Division of Accounting is the primary administrator of the ERAP. Accounting provides employees with relocation rules and specific authorization forms upon notification of employee relocation from the hiring manager (Form ASC-3001). Accounting also provides assistance to employees on interpretation of DPA rules and IRS fringe benefits taxability in regard to moving related expenses such as temporary living expenses and reimbursement costs for the sale of old residences. All claims for payment are submitted to Accounting for payment.

Right of Way is responsible for those relocation services that are real estate related. These include:

1. Counseling services to assist in the sale of the present home and/or purchase of a new home.
2. Providing assistance in locating a home or apartment in the new location.
3. Furnishing an estimate of value for use in selling the present home and/or purchase of a replacement home.
4. Providing available information regarding the new community.
5. Counseling and assisting in the moving of one's personal property.

Each Region/District Right of Way office must appoint an ERAP Coordinator - usually a RAP agent.

NOTES:

10.03.00.00 - RELOCATION NOTICES and OCCUPANCY CERTIFICATIONS

10.03.01.00 Notices

The Uniform Act and 49 CFR 24 prescribe general requirements governing the provision of relocation payments and other relocation assistance. The requirements mandate that potential displacees receive appropriate and timely notices that explain the relocation program and their entitlements.

As such, the Region/District must provide all potential displacees with the appropriate notice described in this section, in writing and within the time frame prescribed.

If the person is unable to read and understand the notice, the RAP Agent must provide the person with appropriate translation and counseling.

Each notice will include the name and telephone number of the RAP Agent to be contacted for answers to questions or other needed help.

All notices should be personally served. If personal service is impossible (occupants are in the armed forces, impacted property is for storage only), the notice may be sent by certified or registered first-class mail (return receipt requested and received), with another copy of the notice sent simultaneously by regular first-class mail. The date of service shall be 5 days for California residents, 10 days for U.S. residents, and 20 days for all others.

10.03.02.00 General Information Notice [49 CFR 24.203(a)]

The first notice provided to the potential displacees is the General Information Notice (GI Notice) (RW 10-7). The mandatory format should not be changed except to add the potential displacee's name and the project identification (Dist-Co-Rte-K.P.-Parcel) and the date the Notice is sent.

The GI Notice is mailed to the potential displacee within three (3) working days of the RAP Branch's receipt of the Parcel Occupancy Data Sheet provided by the Appraiser.

The Notice should be mailed with a copy of the appropriate Relocation Brochure and the assigned Agent's phone number.

Since Title VI information is provided to the owners by either the Appraiser or the Acquisition Agent, the RAP Branch need only send the Title VI information (see 2.04.01.02) to tenants or lessees.

The purpose of the GI Notice is to briefly describe the relocation program and to inform the potential displacees that they will be:

- (1) displaced by a public project,
- (2) given reasonable relocation advisory services, including referrals of replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate,
- (3) given 90 days' advance written notice before they are required to move,
- (4) given the address of at least one comparable replacement residential property before they are required to move,
- (5) and they have the right to appeal if they question the Department's determination of eligibility or benefits.

The RAP Agent must send the GI Notice to all owner and tenant/lessee occupied properties. The owner cannot prevent the District from notifying tenants of the benefits they may be eligible to receive under the Uniform Act. The RAP Agent should advise the owner that it is necessary that the tenants receive a full explanation of the relocation program that includes advising them that there is no rush for them to relocate. If the owner is concerned the tenants will move and there will be a loss of rental income, the Region/District may offer to make a payment to replace lost rent for vacancies occurring due to relocation for a reasonable period of time.

10.03.03.00 **Legal Residency Requirement to Obtain Benefits**

All relocation notices must inform the persons that anyone not lawfully present in the United States is ineligible for relocation advisory services and relocation payments, unless such ineligibility would result in exceptional and extremely unusual hardship to a qualifying spouse, parent, or child.

Notice to potential displaced persons of legal U.S. residency requirements to obtain benefits will be made at the earliest possible time, but no later than the provision of the GI Notice (RW 10-7). Information on residency requirements will be included in the RAP package made available to owners and tenants.

Requirements for U.S. Certification will be included in the General Relocation Information Notice, the Relocation Brochure, and all Notices of Eligibility and Conditional Entitlement Letters.

10.03.04.00 **Notice of Intent to Acquire (NIA)**

Normally, the first notice the owner of the property receives is a Notice of Intent to Appraise or a Notice of Intent to Inspect (\$10,000 and Under approach) from the Appraisal Branch. However, the owner could have contacted the Region/District earlier because of a need to relocate prior to the Appraiser's inspection. If the Region/District determines that there is a need to protect the owner's relocation benefits, then the Acquisition Branch (see 5.03.00.00) will send an NIA (RW 10-8) to the owner-occupants to:

- Protect the eligibility of prospective displacees who need to move prior to the first written offer on the parcel.
- Prevent dual eligibility.
- Assure that all persons are fully aware of relocation assistance benefits and requirements.

The Region/District DDC should use the following to determine if an NIA is appropriate:

- Only owner-occupants (residential/nonresidential) qualify.
- The owner-occupant must meet the same criteria for a hardship outlined in Section 5.03.04.01.
- The owner-occupant must agree to rent the property back to the Department for economic rent.
- The appraisal must be complete and a first written offer made within 60 days. In some instances, the appraiser may have already issued the Notice of Decision to Appraise and/or inspected the property, but the determination of fair market value (and the subsequent FWO) will be delayed beyond a reasonable period of time, and the owner-occupant must relocate immediately.
- If the owner-occupant does not accept the offer within the prescribed time (60-90 days), condemnation proceedings must be initiated, or the acquisition offer withdrawn (see 5.03.04.06).

| NIA LIMITATIONS | |
|----------------------|--|
| Project Type | Issuance |
| Regularly funded | Do not issue the NIA until the initiation of negotiations for the project has been authorized. |
| Federally funded | In addition to the above, do not issue the NIA prior to FHWA authorizing acquisition on the project. |
| Not regularly funded | Appropriate formal approval of a Hardship Acquisition is required, along with the owner-occupant's statement that they must relocate prior to the FWO. |

The Agent issuing the NIA to the owner must provide the RAP package. The Conditional Entitlement Letter with the specific amount of the RHP cannot be provided to the owner-occupant until the appraisal is complete and the first written offer made by the Acquisition Agent. It is strongly suggested that the RAP Agent accompany the Acquisition Agent on the FWO as eligibility for relocation benefits and initial information was already provided.

In some cases, the owner-occupant may not be available for a personal call to deliver the NIA, FWO, or RAP Package because they have relocated out of the area. In that case, all documents must be mailed certified to the owner.

The NIA shall be dated the day that it is served. It shall contain the anticipated date of initiation of negotiations and specify how additional information pertaining to relocation benefits can be obtained.

The NIA should never be issued to tenants or lessees (residential/nonresidential).

10.03.05.00 **Certificates of Occupancy**

To be eligible for relocation benefits, status of the occupants must be obtained via a certification of occupancy.

The Appraiser provides the Parcel Occupancy Data Sheet to the RAP Senior stating the type of occupants on the property (residential or business, owner or tenant/lessee) and the approximate time period they have occupied the property.

The Acquisition Agent obtains a signed Certificate of Occupancy and Receipt of Relocation Benefits at the time of the FWO (and first RAP Call) for all owner occupied properties. This will determine the number of occupants that are eligible for DS&S housing and their tenure.

The Acquisition Agent obtains a signed Owner's Certificate of Tenants from the owner at the time of the FWO. The RAP Agent will make the first RAP Call on the tenants and verify the information on the Certificate.

All occupants must certify their residency status at the time of the first RAP Call.

10.03.06.00 **U.S. Residency Certification**

Certification should be done by completing RW 10-44 at the time the owner or tenant signs the Certificate of Occupancy or receives the Notice of Eligibility, whichever is earlier.

For residential occupants, the head of household will certify himself/herself and may also certify other family members.

A sole proprietor will certify himself/herself.

For partnerships and corporations, the certification may be signed by a person authorized to sign on the entity's behalf.

The Department must receive certification before any claim can be paid.

10.03.07.00 **Notices of Eligibility [49 CFR 24.203(b)]**

Eligibility for relocation assistance shall begin on the date of initiation of negotiations (generally the FWO, but possibly the date of the NIA) for the occupied property. When this occurs, the Region/District must provide the occupants with a notice, in writing, of their eligibility for applicable relocation assistance via a Notice of Eligibility.

This makes the Notice of Eligibility the most important document that is provided to the displacee because it informs them that they have been determined to be eligible for relocation benefits. There is a different Notice of Eligibility for each type of occupancy, so care must be exercised to ensure that the appropriate Notice of Eligibility is provided in a timely manner.

The Notice of Eligibility for owners (residential and nonresidential) MUST be given by either the Acquisition Agent or the RAP Agent on the day of the FWO. The Notice of Eligibility for tenants or lessees (residential and nonresidential) MUST be given by the RAP Agent within 14 days of the FWO.

The timing and format for each type of Notice of Eligibility is described in Table 10.03-A. Refer back to Table 10.01-A if there is a question about type of occupancy. See 10.04.00.00 (residential) and 10.05.00.00 (nonresidential) for specific details about the type of relocation benefits.

Table 10.03-A

| DELIVERY OF NOTICES OF ELIGIBILITY | | |
|---|--|-----------|
| Notice | Timing | Form |
| 180-Day Homeowner Occupants | Notice of Eligibility: As part of the RAP Package, at the time of the FWO by the Acquisition Agent. | RW 10-11 |
| | Conditional Entitlement Letter with specific amounts for the Fixed Move Schedule and the PD, within 30 days of FWO. | RW 10-11A |
| 90-Day Occupants | Notice of Eligibility: As part of the RAP Package, at FWO of a 90-day owner or a 90-day tenant, or within 14 days of FWO by the RAP Agent. | RW 10-12 |
| | When displacees indicate they are actively looking for a displacement dwelling, or when the Department has control of the property (e.g., COE, Effective OP, Executed RE or APU, FOC) - whichever occurs first. | RW 10-13 |
| Non-Tenured Occupants | Notice of Eligibility: As part of the RAP Package, within 14 days of FWO by the RAP Agent. For occupants who move in after the FWO, within 14 days of notification that they are in occupancy. | RW 10-14 |
| | When displacees indicate they are actively looking for a displacement dwelling, but not before the Department has control of the property (e.g., COE, Effective OP, Executed RE or APU, FOC) - whichever occurs first. | RW 10-16 |
| Business, Farm, or Nonprofit Organization | Owner Occupants - at the time of the FWO by Acquisition Agent. Lessees/Tenants Occupants - within 14 days of FWO. | RW 10-17 |
| Non-Occupant Owner - whose sole activity at the site is leasing space to others | At the time of the FWO. | RW 10-43 |
| Personalty Only | Owner - at FWO. Tenant - 14 days. | RW 10-15 |

10.03.08.00 **Reminder Notice**

The RAP Agent shall send timely written notification of the possible loss of rights and expiration dates to persons who:

- Are eligible for monetary benefits, and
- Have moved from the acquired property, but
- Have not filed a claim.

Notification shall be sent periodically throughout the qualification period. If no response to the written notification is received, the RAP Agent should make telephone contact within the appropriate time limit and document the contact in the parcel diary.

Notices of Eligibility are delivered with the RAP Package:

- a) to the owners by the Acquisition Agent during the FWO.
- b) to tenants by the RAP Agent within 14 days of the FWO (exception: RW 10-13 and RW 10-15).

If an updated RHV indicates a change in entitlement amount, the RAP Agent must send a revised entitlement letter to displacee.

10.03.09.00 **90-Day Notices [49 CFR 24.203(c)]**

No eligible displacee shall be required to move unless he or she has received at least 90 days' advance written notice of the earliest date by which he or she may be required to move.

There are two alternative methods for providing notice to vacate:

- 90-Day Information Notice (RW 10-18, RW 10-19) followed by a 30-Day Specific Notice (RW 10-23, RW 10-24) with date certain.
- 90-Day Specific Notice (RW 10-20, RW 10-21) with date certain.

10.03.09.01 **Timing**

Timing for service of notices is based on project certification dates. Notices should be delivered with adequate lead time to carry out a timely, orderly, and humane relocation program. Displacees shall be given a 90-Day Information Notice 30 days after the Department's Conditional Entitlement Letter (residential) or 30 days after estimates are obtained for moving (nonresidential). When at least 60 days have passed, a 30-Day Specific Notice must be delivered IF the effective date is after the state obtains control of the property.

The 90-Day Information Notice may not be delivered prior to initiation of negotiations for acquisition for the property. 90-Day and 30-Day Specific Notices (49 CFR 24) cannot be given if control of the property has not been initiated via a Right of Way Contract, an RE or APU, or initiation of condemnation, and the Region/District is sure that the Department will have control of the property prior to the "date certain" provided in the notice.

Residential displacees must be informed of the maximum relocation housing payment (RHP) amount prior to receiving a 90-day notice (with the appropriate Conditional Entitlement Letter), along with at least one address of a comparable replacement property that is available and within the range of the RHP.

Situations will occur where projects slip and the need for clearance is postponed after issuance of 90-Day Information Notices. If a 30-Day Specific Notice is not served within six months following issuance of the 90-Day Information Notices, the original 90-Day Information Notices shall be canceled and a 90-Day Specific Notice issued when the Department is assured it will obtain control of the property within 90 days.

Absentee owners of personal property are considered to be occupants of real property to be acquired and ARE entitled to 90-day notices. Any person who exercises physical control over the land, including the right to store personal property on the land, is a lawful occupant and is entitled to 90-day notices.

See Table 10.03-A.

10.03.09.02 **Content**

The 90-day notices state that the displacement property will be acquired for a highway project. The Information Notice states a 30-Day Specific Notice will follow; and for residential occupants, it provides the addresses of comparable replacement properties.

The 90-Day and 30-Day Specific Notices advise the displacees that at the time the Department obtains control of the property, they will become state tenants if they have not vacated. They also provide the addresses of comparable replacement property for residential occupants.

10.03.09.03 **90-Day Information Notice**

The 90-Day Information Notice is not a notice to vacate. The RAP Agent serves the 90-Day Information Notice in person on eligible and ineligible lawful occupants who:

- Are required to vacate because of the proposed construction or other State use, and
- Have personal property located on the acquired property.

Since replacement housing must be available and offered to eligible displacees before a Notice to Vacate can be issued, District Right of Way must coordinate acquisition, clearance, rental, and RAP functions to ensure appropriate notices are issued in a timely manner to vacate the property and certify the project.

10.03.09.04 **90-Day and 30-Day Specific Notices**

A 30-Day Specific Notice may be issued after 60 days have passed since the 90-Day Information Notice was issued if control of the property is expected within 30 days. This notice cites a specific date that the displacee will become a state tenant. Revisions can be issued if the anticipated date of control is delayed. Extending the 90-Day or 30-Day Specific Notice does not affect the validity of any notices issued by property management preceding an unlawful detainer action.

Since no eligible residential displacee shall be served a 90-day notice unless appropriate housing is available, the address of at least one available comparable property replacement, but preferably three, must be offered to displacee simultaneously with each notice. The property must be available and must not exceed the “probable replacement value or rent” provided to the displacee in the latest Notice of Eligibility or Conditional Entitlement Letter.

Property Management cannot issue a 30-Day Notice of Termination of Tenancy and Notice to Quit until after the day the Department has possession of the property (RW 11-10). However, RAP can issue the 90-Day Specific Notice and the 30-Day Specific Notice prior to having control of the property, as long as the Region/District is certain the Department will have control before the 90-day or 30-day period expires.

If a 90-Day Specific Notice is issued, the Region/District does not need to issue a 30-Day Specific Notice.

Control of the property is obtained on the date escrow is closed, the Final Order in Condemnation is recorded, the date of possession in the Right of Way Contract (RWC), Right of Entry (RE) or Agreement for Possession and Use (AP&U), or the effective date of the Order for Possession (OP) - usually 30 or 90 days after the court has executed the document before the Department can have physical possession. The owner of the property must have the acquisition funds available to purchase replacement property before the effective date of the 90-Day or 30-Day Notice to Vacate. (Exception: 90-Day Information Notice.)

Either a RAP Agent or Acquisition Agent must serve the Notice to Vacate in person.

If the address of the most comparable property is no longer available, the Region/District must ensure some comparable replacement property is available, within the displacee’s financial means, but it is NOT necessary to reissue a 90-Day Notice to Vacate. The original 90-day period can continue to run.

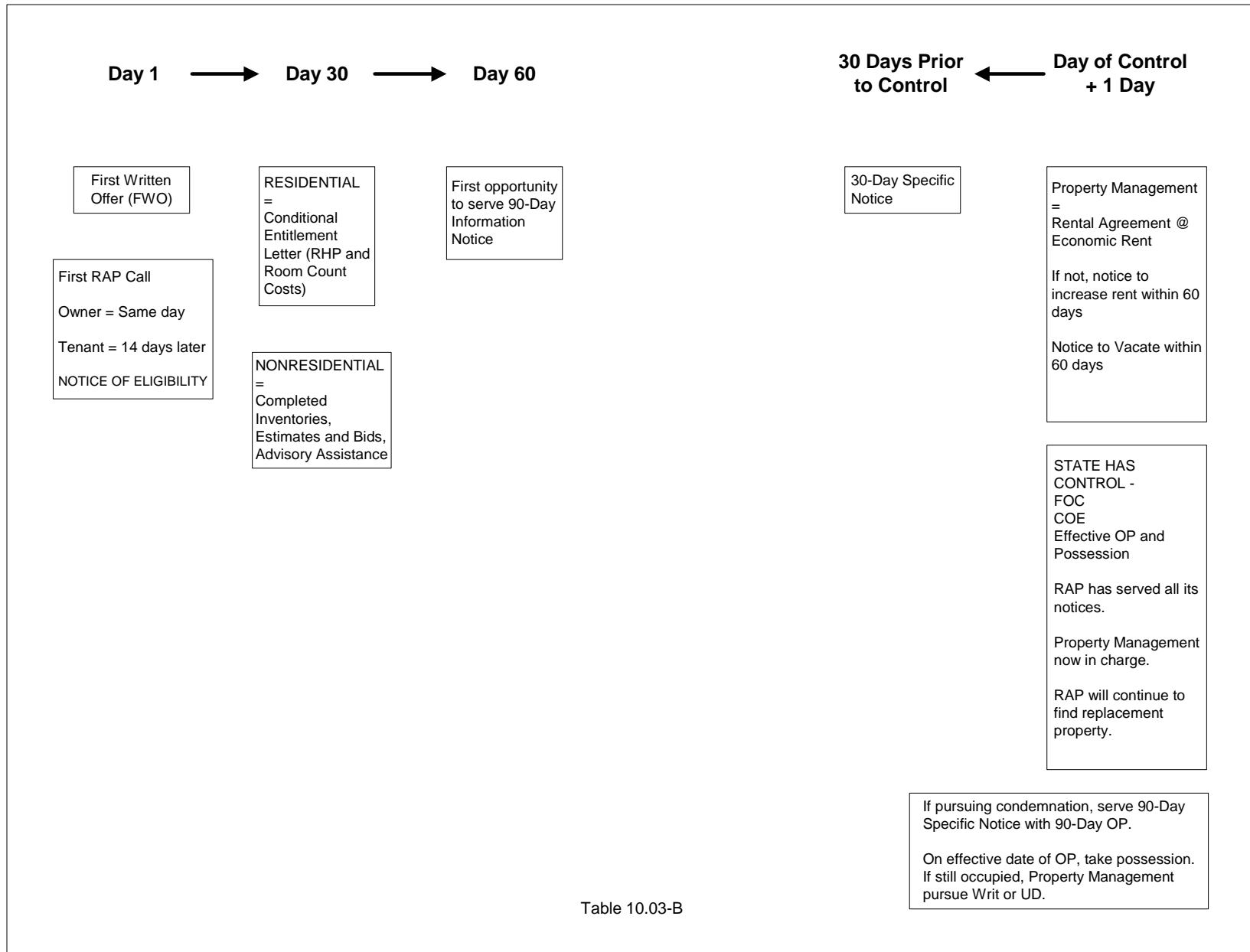


Table 10.03-B

10.03.10.00 **90-Day Specific Notice with OP**

If the OP contains a specific effective date, the RAP Unit issues a 90-Day Specific Notice that is served simultaneously with the OP and is effective the same date as the OP.

If the OP does not contain a specific date by which it will become effective, the RAP Unit serves a separate 90-Day Specific Notice that is effective the same date as the OP and accompanies the service of the OP. The person making service must calculate the 90th day.

If appropriate, the RAP Unit issues a 90-Day Information Notice before the court issues the OP and then issues a 30-Day Specific Notice with a date certain after the court issues the OP. The person making service must calculate the 30th day. In this case, displacee must receive a full offer of their entitlements and must be furnished the address of at least one comparable replacement dwelling with the 90-Day Information Notice. The effective date of the 30-Day Specific Notice cannot be earlier than the effective date of the OP.

10.03.11.00 **Notices to State-inherited Tenants**

Eligible displacees who are either delinquent in their rental payments to the Department, or in violation of their rental agreement with the Department, are considered unlawful occupants for property management purposes. They are still entitled to their RAP benefits as stated in their Notice of Eligibility and Conditional Entitlement Letter. Property Management will serve either a 3-Day Notice to Pay Rent or Quit or a 30-Day or 60-Day Notice of Termination of Tenancy and Notice to Quit. Property Management is responsible for advising the Region/District RAP Agent that Property Management will begin eviction proceedings.

The RAP Agent must ensure service of the 90-Day Specific Notice or the 90-Day Information Notice with a 30-Day Specific Notice is issued prior to the Department's control of the property so that there is no interference with Property Management's notices. An eligible displacee must receive their RAP notices to ensure compliance with the Uniform Act's requirement to provide appropriate 90-day notices. Property Management is responsible for advising the Region/District RAP Agent that Property Management will begin eviction proceedings. Copies of the RAP notices should be sent to Property Management to be retained in their file when the displacee becomes a state tenant.

Once Property Management decides to evict an unlawful eligible tenant, the eviction process should be carried to conclusion.

Eligible tenants who are evicted by the Department because of unlawful occupancy must be advised that:

- They retain eligibility for relocation advisory assistance.
- Relocation payments and any other payments may be subject to satisfaction of debts owed to the State. (See Section 10.08.10.01 on Delinquent Rent to determine affordability prior to withholding RAP payments.)

Ineligible displacees (e.g., non-U.S. residents, occupants after Department's control, unlawful occupants as determined by 10.01.03.05) will not receive relocation benefits. Generally, these occupants are State tenants who rent the property after acquisition by the State. There are no requirements to provide ineligible displacees with the RAP 90-Day or 30-Day Notices.

Although the Department is under no obligation to the ineligible displacee, Region/District staff are encouraged to provide advisory services to help them find replacement property. There is no requirement to provide advisory assistance to state tenants.

10.03.12.00 **Urgent Need**

In extremely rare circumstances, an eligible displacee may be required to vacate the property on less than 90 days' advance written notice. The Department must determine that delivery of the 90-day notice is impracticable in order for this to occur (i.e., the person's continued occupancy of the property would constitute a substantial danger to health or safety to those occupants or others). The RAP diary should fully document the circumstances that required someone to move prior to issuing 90-day notices.

10.03.13.00 **Notice to Withdraw or Modify Relocation Benefits**

There are situations when it is appropriate to withdraw or modify the relocation benefits that have been provided in a Notice of Eligibility or a Conditional Entitlement Letter. Any time there is a change in the benefits that will be provided to a displacee, the Agent must immediately provide a Notice to Withdraw or Modify Relocation Benefits. The Notice must be personally delivered if possible, but at the very least sent by certified registered mail. However, if the displacee has relied on the promise of relocation benefits and has committed themselves financially or via a contract, the Department may be obligated to pay those relocation benefits in question. Refer to 10.01.04.00 for discussion of Promissory Estoppel and 10.09.07.00 for discussion on appeals due to Promissory Estoppel.

There is no standard form for a Notice to Withdraw or Modify Relocation Benefits. The Agent should prepare a letter that addresses the particular benefit(s) that is impacted (previous amounts, new amounts, reason for the change, etc.) and the right for the person to appeal the determination. A copy of the Appeal Form (RW 10-6) should be provided upon request.

10.03.13.01 **Withdrawal of Benefits**

If the Department determines that a person or persons who has received a Notice of Eligibility is no longer eligible for any of the relocation benefits discussed in the letter, then withdrawal of all relocation benefits must be provided. Note: "All relocation benefits" include Advisory Assistance.

The following situations require an immediate notification to the displacee that their benefits are being withdrawn:

1. A long-term postponement of the project creates a situation wherein only irrevocable commitments are allowed under Departmental policy. (See Section 10.17.00.00.)
2. A design modification reduces the requirement for some or all of the property, and the person is no longer required to relocate.

3. The occupant's status as a tenured resident or a valid business is in question, and the Agent has determined they no longer qualify for relocation benefits.
 - A resident purporting to be in occupancy for 90 days is only a seasonal resident and has a primary residence elsewhere.
 - A business claims to operate on the property, but in fact only stores personal property at the site and the business license (and other documentation) shows the primary place of business is at another site.
4. The Department and the occupant are no longer pursuing advanced acquisition, and tenants who have already made efforts to relocate but continue to occupy the property.

A person who receives a Notice of Withdrawal or Modification of Benefits is entitled to appeal the determination. If the person claims Promissory Estoppel, the Statewide Appeals Board must hear the appeal. (See 10.09.07.00.)

There may be other situations that require an immediate withdrawal of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.

10.03.13.02 **Modification of Benefits**

A modification of benefits includes increases and decreases of a monetary benefit, but the person is still entitled to some of the relocation benefits discussed in the Notice of Eligibility.

1. A change in the real estate market indicates the cost of a comparable replacement property is lower than the previous entitlement.
 - A 180-day owner-occupant's price differential is rarely reduced, and only when the Department can document that the person has made no effort to find replacement property based on the amount in the Conditional Entitlement Letter.
2. The 180-day owner-occupant wants to rent.
3. The residential occupant has requested, and received, approval to occupy non-DS&S housing as to size and number of bedrooms.
4. The residential occupant has vacated the displacement property, but has not found replacement property within the one-year time period. (See 10.08.02.00.)
5. A change in the acquisition offer (revised appraisal, administrative settlement) requires a change in Replacement Housing Valuation adjustment (major exterior attribute) or carve-out value (typical residential lot), which modifies the RHP.
6. A further review of the nonresidential operation's documents indicates a change in the previously discussed in-lieu payment, reestablishment payment, or other moving payment.
7. A member of a residential household dies prior to relocation, and the need for a larger replacement property, or a property that is barrier free, no longer exists.
 - The Modification of Benefits can only be mailed after a new RHV is prepared, and only if the occupants have not made a commitment to rent or purchase replacement property.

A person who receives a Notice of Withdrawal or Modification of Benefits that decreases a monetary benefit is entitled to appeal the determination.

There may be other situations that require an immediate withdrawal of benefits. Contact HQ R/W if there are questions about whether a notice should be issued.

10.04.00.00 - RESIDENTIAL DISPLACEMENTS

10.04.01.00 Residential Relocation Benefits

Residential displacees are entitled to advisory assistance (10.01.08.01), moving expenses, and RHPs. Eligibility is based on their status as an owner or a tenant, and based on the length of occupancy in the residence at the time of the FWO, and their status as a U.S. resident (10.01.10.00).

To receive the full amount of the calculated RHP, the displacees must occupy a DS&S (10.06.05.00) property within the prescribed time period (10.08.02.00) and file a claim (10.08.03.00).

Except for Non-Tenured occupants, the displacees may receive relocation benefits prior to the close of escrow (or any other date the State takes possession) as long as other criteria have been met (e.g., occupied the property on the date negotiations were initiated). (See 10.01.03.04.)

10.04.01.01 U.S. Residency Requirement for Moving Expenses

Residential moving expenses will be paid, provided the person has certified the household's legal status and signed the claim form.

When no member of the household is lawfully present in the United States, no moving expenses will be paid.

If some of the occupants are not lawfully present, their personalty must be relocated at their own expense. The RAP Agent must prorate the moving expenses so that only those who can certify as to their status receive a moving expense allowance or reimbursement.

The MSA should not be used when some members of the household are not eligible for moving expenses.

EXAMPLE:

Two of the five occupants cannot or will not certify they are legal U.S. residents. The head of the household has certified that he/she and the other two occupants are present in the U.S. legally. The moving expenses must be prorated 3/5ths as follows:

- A. Fixed Moving Schedule (FMS): Normally the eight (8)-room house would receive \$2,000; but because only three (3) of the five (5) occupants are U.S. residents, the fixed moving schedule is \$1,200, payable when all the personalty has been moved from the property.
- B. Actual Move: The moving company with the lowest bid must be advised that the displacees will be responsible for paying the ineligible 2/5ths of the entire cost. If the non-U.S. residents remove 2/5ths of the entire household's personalty prior to the moving companies preparing their bids, then an adjustment is not necessary.

10.04.02.00 **Moving and Related Expenses - Residential Entitlement [49 CFR 21.301]**

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person [defined at §24.2(g)] is entitled to payment of his or her actual moving and related expenses determined to be reasonable and necessary, including expenses for:

- (a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Region/District determines that relocation beyond 50 miles is justified (10.04.02.01).
- (b) Packing, crating, unpacking, and uncrating of the personal property.
- (c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.
- (d) Storage of the personal property for a period not to exceed 12 months, unless the Region/District determines that a longer period is necessary.
- (e) Insurance for the replacement value of the property in connection with the move and necessary storage (10.05.02.08).
- (f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.
- (g) Other moving related expenses that are not listed as ineligible under 49 CFR 24.305 as the Region/District determines to be reasonable and necessary.

10.04.02.01 **Transportation**

Displacee's cost of one-way transportation to the new location is allowable. Displacee may be paid on a mileage basis not to exceed the current rate established by the State Board of Control or fares charged by commercial transport (e.g., taxis). Special conveyance, such as the cost of an ambulance, may be paid. Actual, reasonable costs for meals and lodging are eligible when the Department finds such costs are necessary.

Moving payments for more than one move are not made, except where found to be in the public's best interest.

Generally, the displacee is responsible for costs beyond 50 miles, based on the most commonly used routes between move points. If it is determined that the move cannot be accomplished within 50 miles, the additional expenses for the longer distance may be allowed, but shall be limited to the nearest available site beyond 50 road miles.

10.04.02.02 **Types of Moving Payments [49 CFR 24.302 and 303]**

Residential displacees have the choice of either a Fixed Moving Schedule (based on a room-count schedule), or the actual cost to move the personalty (based on three methods—MSA, Actual, Self-Move):

- (1) Moving Service Authorization (MSA): selecting any moving company on Department of General Service's list of Moving Companies for the State entitled "State List of Eligible Household Goods Carriers." Payment is made directly to the moving company after completion of move.

- (2) Actual: Lowest of two bids from moving companies, and, after the move is complete, the displacee may:
- pay carrier directly and seek reimbursement, or
 - assign payment to carrier, and the RAP Agent pays carrier directly.
- (3) Self-Move: Displacee will move the personalty based on an MCF. It can be combined with the Fixed Moving Schedule and/or the actual cost to move. The Self-Move should be reserved for unusual personal items the displacee will move themselves; however, the “room count method” may not be an accurate way of determining the time or cost involved. A Self-Move can be used for high bulk/low value items such as stacks of wood, inoperable vehicles, or woodworking equipment. The hourly rate of the displaced person’s time should be reasonable and generally not exceed rates paid to packers and movers of local moving firms. It may include the cost to rent special equipment needed to move the items such as lifts and trucks.

Except for the fixed payment, the displacee is eligible for all other necessary and actual moving expenses listed under 10.04.01.00.

10.04.02.03 **Fixed Moving Schedule [49 CFR 24.302]**

Any person displaced from a dwelling or a seasonal residence is entitled to receive a fixed payment for moving expenses and dislocation allowance as an alternative to a payment for actual moving and related expenses. FHWA has approved the following schedule for California for displacee moves including dislocation allowance for utility service connections. The effective date is September 27, 2001.

The schedule includes a provision of \$50 for the expense and dislocation allowance to:

- a person with minimal personal possessions who is in occupancy of a dormitory style room shared by two or more other unrelated persons, or
- a person whose residential move is performed by the Region/District at no cost to the person (an extremely rare situation).

10.04.02.04 **Fixed Moving Schedule (Chart) [Effective September 27, 2001]**

| SCHEDULE A | |
|--|----------|
| (OCCUPANT PROVIDES FURNITURE) | |
| Number of Rooms | Payments |
| 1 | \$ 575 |
| 2 | \$ 750 |
| 3 | \$ 925 |
| 4 | \$1,100 |
| 5 | \$1,325 |
| 6 | \$1,550 |
| 7 | \$1,775 |
| 8 | \$2,000 |
| Each additional room | \$ 200 |
| SCHEDULE B | |
| (FURNITURE PROVIDED BY LANDLORD) | |
| One room | \$ 375 |
| Each additional room | \$ 60 |
| Dormitory Style rooms (Includes hotel/motel rooms, caretaker facilities, assisted living rooms, and “rooms for rent.”) | \$ 50 |

“Room” for the Fixed Moving Schedule means space in a unit containing the usual quantity of personal property. Normal division includes living room, dining room, bedroom, kitchen, recreation room, library, study, laundry room, basement, garage, workshop, and patio. Other rooms, garages, or storage areas having personal property equivalent to one or more normal rooms may be counted as additional rooms. Most bathrooms do not count as a room.

Counting rooms requires judgment. A large room may have so much furniture that it can be considered two rooms. An alcove or dining area may be a separate room if it has dining room furniture. The RAP Agent must record all room equivalents and briefly explain any judgments. Generally, 1,000 pounds and/or 142 cubic feet of personal property and furniture is equivalent to a “room.” Examples: 100 pounds would represent four floor-to-ceiling 3’ wide bookshelves filled with books, or a well-stocked, walk-in pantry. Additionally, two small rooms with minimal items of personal property might be counted as one room.

Schedules A and B also apply to eligible moves from mobile homes.

Unusual items such as piles of junk, classic cars, or welding equipment should not be counted as an additional room. The RAP Agent should obtain an MCF in accordance with Section 10.04.02.12.

10.04.02.05 Fixed Payment Limitations and Variations

No temporary storage, utility hookups, lodging, or transportation expenses shall be paid to displacees receiving a fixed payment for moving expenses.

A multi-use property owner-occupant who elects to use Schedule A for the residential portion is still eligible for a business move from the other portion of the property.

Where the landlord partially furnishes the rental units, tenants may choose Schedule A to the nearest full room and Schedule B for the remaining rooms. The landlord may be paid for relocation of personal property only as a business move (see 10.05.10.00 MCF or 10.05.09.01 Actual Move).

Scheduling payment based on either Schedule A or B requires only a “Claim for Relocation Assistance - Residential” (RW 10-2).

The displacee cannot receive the payment based on the Fixed Moving Schedule until the RAP Agent verifies that all personal property has been removed from the displacement site. Also, the Fixed Moving Schedule payment cannot be advanced, nor can it be retained by the Region/District Property Management section to pay for delinquent rent.

10.04.02.06 Moving Service Authorization (MSA)

The use of MSA (RW 10-29) permits direct payment to the carrier and is the preferred method of paying commercial movers. This method of relocating displacees is primarily for residential household goods, but can be used for small business moves.

10.04.02.07 **Payment for Other Services - MSA**

If authorized, charges for storage may be included in the carrier's itemized bills.

The MSA should include an appropriate amount for insurance of the personalty. Review Section 10.04.02.08 for additional guidelines.

Payments for other entitlements (e.g., utility hookups), other services (such as ambulance service to move a nonambulatory person), or temporary lodging may be made to displacee in the same manner as provided for actual cost moves by commercial movers.

10.04.02.08 **Requirements for Scheduling Payments - MSA Method**

Generally, there are no out-of-pocket expenses for the displacee if the move is within 50 miles. The moving company submits the bill to DGS; and once approved by the Traffic Manager, the invoice is submitted to the Region/District for payment. A copy of the fully executed MSA form and the carrier's itemized bill showing the DGS Traffic Manager's stamp are needed to support the claim schedule. No other claim form from the displacee is required.

(See Processing MSA - Exhibit 10-EX-27.)

10.04.02.09 **Actual Reasonable Cost of Move by For-Hire Carriers**

A displaced individual or family may be paid actual reasonable cost of a move accomplished by a qualified carrier. Displacee shall secure at least two firm bids based on a list of the personal items to be moved and submit to the RAP Unit for approval prior to the move. If displacee will not make direct payment, they must inform carriers that the Department will pay for the move. Bids must be on company letterhead signed by a person authorized to bind the firm and must contain the following statement:

“As this move is the result of displacement from real property acquired for public purposes and cost is to be borne by the State of California, the costs and charges for this move are exempt from regulations by the Public Utilities Commission. The cost of performing the work in connection with this move will not exceed cost quoted herein. All work performed under this bid shall be accomplished in a good and workmanlike manner and in accordance with standards normally applied by the industry. The company shall be responsible for the actual replacement cost of all loss or damage incurred in the performance of the work.”

Either the displacee or the RAP Agent can request estimates from the moving companies. The RAP Agent must review the estimates to determine appropriateness of charges and then advise the displacee of the lowest bid. The displacee may choose any moving company to perform the move; however, the payment will be limited to lesser of the actual amount or the amount of the lowest bid. The displacee may request the payment be assigned directly to the moving company.

10.04.02.10 **Dislocation Allowance [49 CFR 24.301(c)]**

Displacees who elect an actual move (MSA, Actual, or Self-Move) are also entitled to reimbursement for the dislocation and hookups of household appliances and other personal property that are moved from the displacement property to the replacement property. Reimbursement is limited to those amounts that are actual, reasonable, and necessary as supported by documentation from the displacee. Typical charges are:

- Cable and telephone installation hookup fees (exclusive of any deposits for equipment or services).
- Retuning a piano or resetting a grandfather clock.
- Connection for an icemaker, a water softener, or a gas/electric dryer (not to include changes to the replacement property to accommodate the appliances).

If the Department moves the personal property from a dormitory style room that is shared by two or more persons, the dislocation allowance is limited to \$50.

10.04.02.11 **Paying the Moving Company**

The RAP Agent may pay a moving company after all personal property has been removed from the displacement site, by either:

Written Arrangement - signed by displacee, Department, and mover. Displacee pays the moving company, and presents itemized bills and a proper claim to the Region/District Department after the move is completed. The RAP Agent reviews the bills and deletes any ineligible costs, processing the claim for payment to the displacee. Displacee is responsible for any ineligible costs.

Assignment of Payment - Displacee assigns the moving payment directly to the moving company, who agrees to accept payment after the invoices have been reviewed and the claim is processed. The Assignment of Payment is executed by displacee and carrier. Before assignment is accepted, the RAP Agent shall examine all documentation supporting the carrier's cost. Ineligible costs shall be deleted; only an assignment in the proper amount shall be accepted. Displacee is responsible for paying the moving company for all ineligible costs.

When scheduling payments directly to the moving companies, a copy of the written arrangement or assignment shall be attached to the Claim (RW 10-2).

10.04.02.12 **Move Cost Finding (MCF)**

For unusual situations where the District determines that a fixed payment or actual cost move is not the most reasonable and cost-effective way to move all or a portion of an occupant's personal property, a residential occupant may use an MCF. The reason for using an MCF must be documented in the RAP file. Nonresidential self-move procedures in Section 10.05.10.01 apply. RW 10-31 may be modified to document the agreement that the displacee is responsible for relocating the personal property. Payment cannot be made until the RAP Agent verifies that the real property is vacant.

RAP Intranet has an MCF calculation to aid the RAP Agent in determining the amount of the MCF. The calculation is based on the number of labor hours to pack, crate, transport, uncrate, and unpack the items of personal property, plus the cost of special equipment such as forklift, dolly, rental truck, and boxes.

10.04.02.13 **Storage**

A residential displacee MAY be entitled to storage of their personal property if the Region/District RAP Senior determines that it is absolutely necessary in order to vacate the displacee for the project.

Storage of personalty is not an automatic benefit and should only be authorized when it is in the best interest of the public and the project. The determination should be based on the needs of the Region/District, the nature of the displacee's operation, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage would facilitate relocation. It is the RAP Senior's responsibility to establish the terms (e.g., monthly rate, term, comparable unit). Examples of justifiable storage are:

- Displacee has diligently looked for replacement property, but has not been able to locate something because of the Department's DS&S requirements.
- Construction of the replacement property has been delayed by some unforeseen circumstance, again not the result of the displacee's actions.
- The project's time schedule supports relocating the displacee's personalty immediately.

The displacee's storage must be preapproved by the RAP Senior based on the maximum period of time the displacee will need before permanent occupancy of the replacement property can take place, up to 12 months. Displacees are not automatically entitled to a full 12 months of storage.

Region/District may authorize a flat storage rate for the displacee's storage based on a market analysis of storage rates for comparable units. The displacee can be reimbursed at the end of the agreed upon time period after submitting a claim, including invoices and paid receipts. An optional method of payment is for the displacee to execute an Assignment of Funds wherein the Region/District may advance the first and last month's storage rent to the Storage Facility, and make periodic payments (e.g., quarterly) for the agreed upon time period.

All arrangements for storage should be documented in writing between the Region/District and the displacee, and if applicable, the storage facility.

Displacees are also entitled to the actual, reasonable, and necessary costs to move their personalty into and out of storage, up to 50 miles for each move (including necessary unloading and stacking). The Region/District is only responsible to move the same amount (or less) of personal property out of storage to the replacement site. The displacee must be advised that they cannot move other personal property items into the storage unit during the period of storage.

Extensions beyond 12 months should be rare and only when the displacee's circumstances are so unusual that an additional month or two of storage is warranted.

Note: Displacees are entitled to insurance for the replacement value of the personal property in connection with the authorized storage.

10.04.03.00 **RHPs**

49 CFR 24.2(d) requires the replacement property be within the financial means of the displaced person as determined by the following:

- (i) A replacement dwelling purchased by an eligible 180-day owner-occupant is considered to be within the displacee's "financial means" if the homeowner will receive the maximum calculated PD (10.04.09.00), the full MD (10.04.12.00), and the reimbursement for all eligible IE (10.04.13.00).
- (ii) A replacement dwelling rented by an eligible 90-day owner/tenant occupant is considered to be within the displacee's financial means if, after receiving the maximum calculated RD (10.04.15.01), the displacee's monthly rent and estimated average monthly utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling.
- (iii) For a displaced person (Non-Tenured) who is not eligible to receive an RHP because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Region/District pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of the displacee's gross monthly household income or, if receiving a welfare assistance payment from a program that designates amounts for shelter and utilities, the total of the amounts designated for shelter and utilities. The RD must be under Last Resort Housing provisions.

10.04.03.01 **Maximum RHP**

To receive the maximum RHP (PD or RD), the displacee must purchase or rent, and occupy a DS&S residential property within the time frame prescribed in 10.08.02.00. The actual replacement property does not have to be comparable to the displacement property nor the probable replacement property (RHV). However, the actual price or rent paid for the property must be equal to or greater than the amount of the probable replacement property ("spend-to-get").

In rare cases, a 180-day Owner-Occupant may not be entitled to a PD (calculation is zero, or does not "spend-to-get"); however, an MD and/or IE may still be paid if the displacee meets the same time frames to occupy a DS&S property.

10.04.04.00 **Inspections of Replacement Dwelling [49 CFR 24.403(b)]**

Before making an RHP or depositing a payment into escrow, the RAP Agent shall inspect the replacement dwelling and determine whether it meets DS&S standards.

The inspection must be complete prior to the displacee committing to the purchase/rental of the property.

The RAP Agent shall complete a DS&S Inspection Report (RW 10-40) as a prerequisite to any replacement housing or rental RHP. The form is completed, signed and dated in ink, and filed in the District RAP file. A copy of the form is not included in the claim package.

All specifications relating to the replacement must be answered "yes" to qualify it as a DS&S replacement dwelling.

The three data sections at the top of the Inspection Report provide a means of comparing the area and room requirements of the people who will occupy the replacement dwelling with its habitable area and room count. The replacement dwelling area and room count must equal or exceed requirements before payment can be made. Estimated dimensions may be used when computing areas for the various rooms.

10.04.04.01 **DS&S Inspections for Others**

Region/District staff may be contacted to provide DS&S inspections for other states. The RAP Senior should respond promptly to the request and ensure that any relevant issues related to the inspection are obtained in advance of the actual inspection, with appropriate remarks returned to the requesting agency.

There may also be situations that require the RAP Senior to request another agency to perform the DS&S inspection for a displacee that has relocated out of California or the United States. These requests should be made through that area's regional FHWA office, the State Highway Department, or the main governmental body.

10.04.05.00 **Inability to Meet Occupancy Requirements [49 CFR 24.403(d)]**

No person shall be denied eligibility for an RHP solely because the person is unable to occupy the replacement property within the time frames set forth in 10.08.02.00 for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Region/District.

A displacee may enter into a construction contract for rehabilitation of a replacement dwelling or into a legally binding contract for purchase of a replacement dwelling, but cannot secure title and/or occupy the dwelling within the required period for reasons beyond reasonable control. In these situations, the RAP Unit shall consider displacee as having purchased and occupied the dwelling as of the date of the construction or purchase contract. Displacee must have entered into the contract, however, before the normal one-year replacement period expired.

The RAP Agent shall secure a statement signed by displacee summarizing the reasons beyond their reasonable control and retain it in the case file.

The RHPs under the above situations shall be deferred until the person actually occupies the replacement dwelling. When replacement housing is being built or rehabilitated, partial payments may be made from escrow.

10.04.06.00 **U.S. Residency Requirement for RHPs**

Displacees who are not present in the U.S. legally cannot receive an RHP. If the household has some occupants that cannot certify they are legal U.S. residents, the RHP for the remaining U.S. residents must be adjusted [49 CFR 24.208(c)].

The number of bedrooms to satisfy DS&S requirements will be based on the number of occupants having legal status, but will not be less than the number of bedrooms at the displacement property. In determining whether or not the "thirty percent of income" rule should be used in calculating the RD, the income of a family member who is not certified must still be considered in determining household income, or the entire household's income cannot be considered for the "thirty percent rule."

10.04.07.00 **RHPs - 180-Day Owner-Occupant's Eligibility [49 CFR 24.401(a)]**

A displaced person is eligible for the RHP for a 180-day homeowner-occupant if the person:

- (1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations (FWO or NIA); and
- (2) Purchases and occupies a DS&S replacement dwelling within one year after the later of the following dates (except that the Region/District may extend such one-year period for good cause);
 - (i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the full amount of the estimate of just compensation is deposited in the court, or
 - (ii) The date the displacee is advised, in writing, of the address of a comparable replacement property, within their financial means.

10.04.07.01 **180-Day Owner-Occupant RHP [49 CFR 24.401(b)]**

The RHP for an eligible 180-day homeowner-occupant is limited to the amount necessary to relocate to a comparable replacement dwelling. The payment shall be the sum of:

- (1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling (PD); and
- (2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling (MD); and
- (3) The reasonable expenses incidental to the purchase of the replacement dwelling (IE).

If the sum of these three payments exceeds \$22,500, then LRH provisions apply.

A 180-day owner-occupant may receive an RD in lieu of the entire RHP (10.04.14.00).

10.04.07.02 **Purchase of Replacement Dwelling [49 CFR 24.403(c)]**

A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling; or
- (2) Purchases and rehabilitates a substandard dwelling; or
- (3) Relocates a dwelling which he or she owns or purchases; or
- (4) Constructs a dwelling on a site he or she owns or purchases; or
- (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases; or
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

10.04.07.03 **Rehabilitation of Replacement Dwelling**

Rehabilitation and/or home improvement costs must be incurred or committed at the time of purchase and occupancy of a DS&S replacement dwelling. If the displacee was provided the address of a comparable replacement property at the time of displacement, there is no provision for any additional payments for cost incurred by the displacee undertaking home improvements if occupancy of a DS&S dwelling is delayed. Costs to add luxury items, ornamentation, or unusual or atypical features are also not eligible for reimbursement as a replacement housing payment claim. This is a separate issue from rehabilitating a previously owned dwelling (10.04.11.00).

The displacee is required to include any rehabilitation of home improvement work as part of the sales agreement, and/or in the mortgage financing for the purchase and improvement of the replacement dwelling. The rehabilitation or home improvement financing should be adequately structured with other requirements such as adequate building plans and specifications for the work prepared conforming to local building codes and lender requirements, enforceable contractor guarantees, fire and hazard insurance requirements, and bonding to assure satisfactory work and scheduled completion.

There are significant sources of home improvement mortgage financing via the HUD/FHWA loans that may be available for displacees who choose to improve their replacement properties.

10.04.08.00 **Payment Procedures**

Payment Into Escrow: All or a portion of the estimated RHP can be placed into escrow to assist the displacee with the financial aspects of the purchase based on estimated closing and loan documents. The Region/District's escrow instructions for the displacee's actual replacement property require the final closing statement state the total price of replacement dwelling.

Payment After Escrow Has Closed: Displacee may choose to complete the purchase of the replacement property without any of the RHP deposited into escrow in advance. After close of escrow, displacee must submit certified copies of the closing statement and the Truth-In-Lending statements, along with a claim form for reimbursement. The RAP Agent will review all documentation and pay the eligible expenses.

10.04.09.00 **Price Differential Calculation**

The PD is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

- (i) The reasonable cost of a comparable replacement dwelling as determined in accordance with 10.06.00.00.
- (ii) The purchase price of the DS&S replacement dwelling actually purchased and occupied by the displaced person.

Procedures for computing PD are shown on Table 10.04-A.

10.04.10.00 **Owner Retention of Displacement Dwelling [49 CFR 24.401(c)(4)]**

If the owner retains ownership of the displacement dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling shall be the sum of:

- (1) Cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and
- (2) The cost of making the unit a DS&S replacement dwelling; and
- (3) The current fair market value (vs. historical cost) for residential use of the replacement unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site.
- (4) The retention value of the dwelling, if such retention value is reflected in the 'acquisition cost' used when completing the RHP.

The combined costs of relocation, rehabilitation, and improvement to DS&S standards are eligible for reimbursement to the extent they do not exceed the maximum PD entitlement based on comparable replacement properties. This may include construction of features such as garages if they cannot be moved. Interim or construction financing costs can be considered in the total construction costs to meet the "spend-to-get" requirements for the maximum PD.

The Region/District is not required to prepare an expensive or sophisticated valuation report to determine the value of the property. The Region/District should ensure that its valuation is reasonable and supportable as its determination could be appealed.

Refer to 8.06.08.00 and 8.06.09.00 for additional information on owner retention or relocation of improvements. Under Section 8.06.08.00, Acquisition does not participate in the cost to move the dwelling but pays the “in-place” value of improvements, minus salvage value. Under Section 8.06.09.00, Acquisition pays the cost to move the dwelling to the remainder and reconnect all utilities. In both cases, RAP can pay the PD based on the RHV for a DS&S comparable replacement property based on the fair market value of the DS&S dwelling reestablished on the remainder.

10.04.11.00 **Previously Owned Replacement Dwellings [49 CFR 24.403(c)(6)]**

A displacee who moves into a previously owned replacement residential property is still entitled to the RHP (PD, MD, IE) regardless of how long the property has been previously owned, or how it was acquired (inherited, gifted, purchased, built).

To receive the maximum PD, the previously owned replacement property must have a current fair market value equal to or greater than the price of the comparable replacement property (RHV).

The displacee may also be entitled to an MD based on the existing loan that was obtained sometime prior to vacating the displacement property, or a new MD and related expenses (IE) if the displacee chooses to refinance the existing loan on the previously owned replacement property. To be eligible for an MD, the new loan rate on the previously owned replacement property must be less than the existing loan, but more than the loan rate on the displacement property.

If the owner buys back the dwelling at the Department’s auction, the reestablished dwelling on the new site or even the remainder qualifies as a previously owned replacement dwelling.

| BASIC COMPUTATION - PD | |
|---|---|
| Type of Replacement | Computation |
| Purchase of Existing DS&S Replacement Dwelling | <p>The PD is the difference between the acquisition cost of the displacement dwelling and the lesser of the following two amounts:</p> <ul style="list-style-type: none"> • The price displacee actually paid for a replacement dwelling. • The price of a comparable dwelling as determined by the Department. |
| Rehabilitation of an Existing Non-DS&S Dwelling | <p>Generally, the purchase price for “spend-to-get” requirements is the amount established in an escrow or written contract as the agreed selling price. The State will consider as part of the purchase price certain work required on the replacement dwelling, provided all such work is completed or contracted for within one year following the close of escrow for the replacement property.</p> <p>If displacee purchases a non-DS&S dwelling on the remainder or other land, the following costs are eligible for reimbursement:</p> <ul style="list-style-type: none"> • Work necessary to meet DS&S standards. • Major exterior attributes found in both the displacement property and replacement property used to determine maximum payment. |
| Construction of a New Dwelling | <p>With prior notification, displacee may build a replacement. PD is the difference between the acquisition cost of displacement dwelling and the least of the following two amounts:</p> <ul style="list-style-type: none"> • Cost of an existing comparable replacement dwelling. • Current fair market value of a comparable newly constructed dwelling. |
| Ownership of Replacement Dwelling Prior to Displacement | <p>A replacement dwelling owned by displacee prior to State’s first offer may be used as a replacement dwelling in the computation of a PD payment. Regardless of the date or the manner in which the residence was acquired, the current fair market value of the residence is used to determine the amount spent by the claimant.</p> |

Table 10.04-A

10.04.12.00 **MD [49 CFR 24.401(d)]**

The payment for increased mortgage interest cost shall be the amount, which will reduce the mortgage balance on a new mortgage to an amount, which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs (e.g., points and loan origination fees). The payment shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations, and is contingent upon a mortgage being placed on the replacement dwelling.

The MD calculation will result in an amount that is needed to reduce the mortgage balance on the actual replacement property to an amount that would result in the same monthly payment at the displacement property, if there was no change in the term or the mortgage balance.

Payment for increased mortgage cost is contingent upon displacee purchasing, occupying, and obtaining a mortgage on a DS&S replacement dwelling.

EXAMPLE:

The displacee had a \$50,000 mortgage at the displacement property with a remaining term of 240 months at 7% = \$387 PI

If the new mortgage at the actual replacement property were \$50,000 at 10%, the payment for 240 months would be \$482 PI. (Remember: assuming no change in term or balance between the displacement and replacement loans.)

How much money is needed to reduce the mortgage at the replacement property to an amount that would result in the \$387 PI?

MD calculator will determine the Present Value of a 10% loan for 240 months with a \$387 payment.

Present Value: \$40,100

The MD payment to the displacee is the difference between the \$50,000 and the \$40,100, which should be used by the displacee to buy down the loan and reduce the payments (not mandatory).

MD Payment: \$9,900

10.04.12.01 MD Factors

The following factors shall be considered when computing the MD:

- (1) The payment shall be based on the unpaid mortgage balance(s) on the displacement dwelling.

Note 1: In the event the person obtains a smaller mortgage than the mortgage balance(s) computed in the buy-down determination, the payment will be prorated and reduced accordingly.

Note 2: To compute the buy-down if the term of the new mortgage is shorter than the remaining term of the displacement mortgage, a hypothetical monthly payment that assumes the displacement mortgage had the same shorter term must be used.

- (2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling or the term of the new mortgage, whichever is shorter.
- (3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.
- (4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:
- They are not paid as IE;
 - They do not exceed rates normal to similar real estate transactions in the area;
 - The RAP Agent determines them to be normal expenses and necessary for the replacement area, and
 - The computation of such points and fees shall be based on the lesser of the unpaid mortgage balance on the displacement or replacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

- (5) The displaced person shall be advised of the approximate amount of this payment and the conditions that must be met to receive the payment as soon as the facts relative to the person's current mortgage(s) are known (see Exhibits 10-EX-13 and 10-EX-14); and the payment shall be made available at or near the time of closing on the replacement dwelling in order to reduce the new mortgage as intended.

See 10-EX-15 for example calculations, and the MD Calculator on the Right of Way Intranet.

10.04.12.02 **Items Not Eligible for Mortgage Differential**

The following items are not eligible for MD:

- Interim financing or construction loans.
- Mortgages on all types of personal property.
- Mortgages that were materially changed less than 180 days before initiation of negotiations. This includes any change in rate, term, or monthly payment, excluding variable rate mortgages. A new trustee or beneficiary is not a material change.

Exceptions: Adjustable Rate Mortgages (10.04.12.12) and Home Equity Loans (10.04.12.08).

10.04.12.03 **Determination of Rates, Points, and Fees**

The RAP Agent must document interest rates, purchaser's loan points, and origination or assumption fees and retain all support documentation in District RAP files.

The RAP Agent shall contact three lending institutions in the replacement area, if available, to determine the prevailing interest rate. Additional lenders may be contacted at the Region/District's option. Information shall be updated quarterly or more often if necessary.

10.04.12.04 **Mortgage Interest Rates**

The MD calculation is made on rates available as of the date of move from the displacement property, not when the displacee enters into a contract to purchase a replacement property (within the one year time period).

The prevailing interest rate shall be the highest interest rate generally charged. In unusual circumstances, the RAP Senior may authorize using an interest rate that exceeds the prevailing fixed interest rate, in which case full documentation must be included in the file. Justification may be the unavailability of the current prevailing rate due to the amount of the new mortgage or other similar reasons.

Additionally, if the displacee is required to pay an interest rate that is higher than the prevailing rate due to his or her unique circumstances (e.g., poor credit risk), the higher interest may be used in calculating the MD if the RAP Senior requests such a waiver from FHWA [49 CFR 24.7] through the R/W HQ RAP Senior stating:

“The displacee is required to pay a higher (interest rate of __%) (loan original fee/point of __%) than the prevailing rates (__%) because of (describe situation). It has been determined that the additional costs (\$____) the displacee will have to pay over the prevailing rates would prevent the displacee from obtaining comparable housing.”

10.04.12.05 **Points and Origination or Service Fees**

These fees shall be the highest generally charged by lenders in the replacement area. The same sampling and updating requirements apply as with interest rates. See the above section for information on using higher than prevailing rates.

These fees may be paid as an IE if an actual increased interest rate is not incurred on the replacement dwelling. Where a loan did not exist on the displacement dwelling of a long-term owner, fees related to a loan on the replacement dwelling will not be reimbursed.

The purchaser's (displacee's) points and loan or assumption fees on a down payment should be considered IE. The RAP Unit shall determine rates and document data sources. If interest rates vary, the RAP Unit shall use the mortgage rate closest to the actual mortgage being replaced.

10.04.12.06 **Mortgage Differential Calculation**

The MD can be calculated by hand or by downloading the "MD Calculator" from the Right of Way Intranet. Use the following definitions in determining which data and which format must be used.

| TERM | DEFINITION |
|--|--|
| Buy-Down | Increased mortgage interest costs are commonly known as the buy-down. The buy-down is the payment required to reduce the balance on a new mortgage to an amount that can be amortized with the same monthly payment for principle and interest as for the mortgage(s) on the displacement dwelling. The payment includes purchaser's points and loan origination or assumption fees if not paid as incidental costs. |
| Old Mortgage | Existing mortgage balance on the displacement property. |
| New Mortgage | Mortgage on the replacement property. |
| Computed Amount for a New Mortgage | Amount to be financed to maintain the monthly payment (principle and interest) of the old mortgage (the present worth of the current payment of principle and interest on the displacement property). |
| Standard Buy-Down | New mortgage dollar amount is the same or larger than the computed amount for a new mortgage, and the term is the same or longer than that of the old mortgages. |
| Reduced New Mortgage Buy-Down | The new mortgage dollar amount is less than the computed amount for a new mortgage. |
| Reduced New Mortgage Term Buy-Down | The term of the new mortgage is less than that of the old mortgage. |
| Reduced New Mortgage and Term Buy-Down | The new mortgage dollar amount and term are less than these factors for the old. |

10.04.12.07 **Multi-Use Properties - Segregation of MD Payments**

The value of the owner's unit is the base for determining payment where displacement or replacement property is more than a single-family dwelling (10-EX-19). The percentage that the owner's unit contributes to the total value of property is used to compute payment. When rental rates are used, the economic rent of the owner's unit is used.

10.04.12.08 **Home Equity Loans [49 CFR 24.401(d)]**

To compute an MD when the displacee has a home equity loan on the displacement property, the loan balance is the lesser of the present unpaid mortgage balance, or the unpaid balance that existed 180 days prior to the initiation of negotiations. This is important because a home equity loan mortgage instrument could allow the borrower to increase the mortgage balance at will. The interest rate is the prevailing interest rate for the same kind of home equity mortgage instrument. If the home equity mortgage encumbering the acquired property has no set amortization of principal, use the prevailing amortization period of the current market.

10.04.12.09 **Government Subsidized Loans**

When the displacee has a loan with a government subsidized interest rate that produces a reduced payment on the displacement dwelling, the terms of the loan usually require that the interest subsidy (the cumulative difference between what the displacee paid with the subsidized rate and would have paid without it) be paid upon the sale or other conveyance of the property. Thus, while the subsidy creates an accumulating debt for the mortgagor (displacee), the mortgagor is not required to make monthly or other periodic payments against that debt prior to conveyance. The interest subsidy, therefore, is not a “mortgage” within the meaning of the Uniform Act and, as such, should not be part of an MD. The interest subsidy is a liability to the owner and paying it out of the proceeds of the sale of the displacement property is no different from paying back a mechanic’s lien or other similar liability. To compute an MD when a subsidized loan is present, the loan balance is the balance without the subsidy, the term is the remaining term on the loan without additional time for repaying the subsidy, and the interest rate is the subsidized interest rate.

10.04.12.10 **Balloon Payments**

On a mortgage with a balloon payment, use the mortgage balance, interest rate, and monthly payment amount that are in effect on the date of acquisition. The monthly payment is normally predicated on a term longer than the actual term of the mortgage, so the computed remaining term is greater than the actual remaining term of the mortgage. Use of the computed remaining term provides the appropriate MD payment.

10.04.12.11 **Multiple Mortgages**

If there is more than one mortgage, compute the buy-down by completing the computations for each mortgage using the terms of that mortgage. If there is an old second mortgage that has a higher interest rate than any available rate, the buy-down amount will be zero, but you then add points to arrive at an MD. The points are still eligible even though the new mortgage is at a rate that does not exceed the old mortgage.

The RAP Agent must compare the total loan balances when there are multiple mortgages at the displacement and/or replacement properties to ensure that the “lesser of” is used in calculating the MD.

10.04.12.12 **Reverse Mortgages**

The purpose of the Mortgage Differential (49 CFR 24.401) is to reduce the mortgage balance on a new mortgage to an amount, which could be amortized with the same monthly payment for principal and interest as that for the mortgage on the displacement dwelling. Since a reverse mortgage is based on an actuarial table and is not designed to amortize during the life of the loan, it does not qualify for a Mortgage Differential. In simple terms, a Mortgage Differential payment cannot be applied to the loan balance and reduce the displacee’s debt.

10.04.12.13 **Adjustable Rate Mortgages (ARM)**

If the displacement mortgage is an Adjustable Rate Mortgage (ARM), use the mortgage balance, interest rate, and monthly payment amount that were in effect on the date escrow closed or the State had control and possession.

It is expected that replacement ARM mortgages are the more cost-effective replacement mortgage financing for a predisplacement ARM that has not yet adjusted or has interest adjustment specifications that remain more favorable than currently available fixed rate mortgage financing. If a replacement ARM with equivalent rate adjustment specifications and terms at the displacement ARM is available that would result in a lower MD than the fixed rate mortgage, the available ARM should be used to compute the amount of the MD.

10.04.13.00 **Incidental Expenses (IE) [49 CFR 24.401(e)]**

The displacee may be eligible for reimbursement for those necessary and reasonable costs actually incurred by the displaced person incidental to the purchase of a replacement dwelling, and customarily paid by the buyer including:

- (1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.
- (2) Lender, FHA, or VA application and appraisal fees.
- (3) Loan origination or assumption fees that do not represent prepaid interest (limited to the amount of the displacement mortgage).
- (4) Certification of structural soundness and termite inspection when required.
- (5) Credit report.
- (6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.
- (7) Escrow agent's fee (limited only by what is actual and reasonable for the selected Escrow Company).
- (8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).
- (9) Such other costs as the RAP Senior determines to be incidental to the purchase, and a standard expense for purchases in the actual replacement area. Examples:
 - Tax report service fees.
 - Sales or use tax on mobile homes.
 - Mortgage Insurance Premium (MIP) or Private Mortgage Insurance (PMI) payments that have been paid in escrow (limited to the amount of the displacement mortgage), and not part of the monthly payment.
 - Association fees that are required on a one-of-a-kind basis as part of displacee's equity position in the replacement property.

Fees associated with a new loan (e.g., appraisal report, credit report, lenders processing or packaging costs) can only be paid if the displacement property had a bona fide mortgage at the time of acquisition.

10.04.13.01 **Incidental Expense Limitations (IE)**

The following expenses are not reimbursable:

- Expenses incurred by the State's grantor in the acquisition of grantor's property.
- Points that are paid as part of the MD payment.
- Costs paid in advance by the seller of the replacement property and prorated in escrow, such as taxes, insurance, and condominium fees. [Note: Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, Section 203(l)(1)(c) states "taxes and insurance are prepaid and not considered an expense incidental to the purchase."]
- Mobile home sales or use tax on the difference if the actual cost exceeds the calculated replacement cost.
- Motor vehicle registration fees on mobile homes.
- MIP that has been added to the loan amount.
- Warranty insurance.
- Additional costs incurred in securing a larger mortgage on the replacement dwelling than existed on the displacement dwelling.

10.04.13.02 **Proof of Payment**

Proof of payment of actual expenses is documented by showing separate items on the certified copy of the closing escrow statement, receipts or statements, and canceled checks.

10.04.13.03 **Incidental Expense and Mortgage Financing [49 CFR 24.401(b)(3) and 24.401(e)]**

Where there is no mortgage on the displacement property, the costs incurred in connection with securing mortgage financing on the replacement property should not be considered as an eligible IE. These costs are not considered necessary to enable the displacee to relocate to a comparable property.

10.04.13.04 **Mortgage Insurance Premiums (MIP)**

The Department of Housing and Urban Development (HUD) has established a process for collecting MIP for certain mortgages that HUD insures. Information about MIPs for HUD should be obtained from the local HUD Office or displacee's lender.

Under the new system, the borrower can:

1. Pay a single premium on the mortgage as an up-front cost paid into escrow. This payment represents the total premium obligation for the insured loan; or
2. Finance 100% of the MIP by adding the premium obligation to the loan amount. In effect, this option allows the borrower to finance the MIP over the term of the mortgage loan at the same interest rate.

Mortgage Insurance Premium is reimbursable as an eligible IE if the total premium is paid through escrow for the replacement property (Item #1). It may also be reimbursed as part of the MD expense if the premium is financed as part of the mortgage (Item #2). Reimbursement is limited to the actual amount of MIP that would be required on the unpaid balance of the old loan or the amount of MIP required on the new loan for a comparable replacement dwelling, whichever is less.

The RAP Agent should inform all displacees eligible for MIP reimbursement of both options and advise them that they can maximize their entitlement dollars by selecting the single-premium option.

The amount of MIP varies depending on the term of the loan, credit status of the borrower, and whether the premium is paid up front or financed.

A factor developed by HUD is multiplied by the amount of the mortgage to determine the amount of MIP. Exhibit 10-EX-16 shows the MIP factors and procedures for the two options.

10.04.13.05 **Private Mortgage Insurance (PMI)**

In certain instances, conventional lenders require borrowers to pay PMI to obtain a loan. Since the rates charged by firms providing PMI are competitive in nature, no set formula can be used to establish a payment reimbursement procedure.

Generally speaking, a borrower is required to pay the first year's premium up front in escrow. The premium for the remaining term is added to the monthly mortgage payment and collected accordingly. The amount of PMI paid up front in escrow is eligible for reimbursement as an incidental expense.

Payment is based on the proportional share of PMI applied to the remaining balance of the loan on the displacement dwelling or the loan on a comparable replacement dwelling, whichever is less.

10.04.14.00 **Converting the Price Differential (PD) to a Rent Differential (RD) [49 CFR 24.401(f)]**

A 180-day homeowner-occupant may elect to rent, instead of purchase, a DS&S replacement dwelling. If so, the 180-day owner-occupant should be advised that they can receive an RD in lieu of the entire RHP (PD, MD, and/or IE) for purchasing a replacement dwelling.

The 180-day owner-occupant need not be entitled to a PD as such to qualify for an RD up to \$5,250. The maximum RD is calculated in the same manner as with 90-day occupants, except that the rent at the displacement property is based on economic rent, and the RD cannot exceed the calculated Price Differential.

Any advanced monies from the RHPs (e.g., credit report and appraisal fees paid into escrow for a potential purchase) that have already been paid should be deducted from the RD to avoid duplicate payments.

The 90-day/30-day Notices required under 49 CFR 24.203(c) that are sent to a 180-day owner-occupant who chooses to rent will provide the addresses of comparable replacement properties that are available for sale, not rental listings. The addresses must be available for less than the amount of the most comparable property used in the latest RHV. Exception: If under LRH the Department determined that the best solution for the displacee was to provide an RD as the RHP, then the Notices will list available rental listings.

10.04.14.01 **Last Resort Housing for 180-Day Owner-Occupants**

If possible, all funds must be deposited into escrow. However, should the displacee file a claim after the close of escrow on the replacement property, the displacee can be paid the full RHP directly.

10.04.15.00 **Relocation Housing Payment For 90-Day Occupants Eligibility [49 CFR 24.402(a)]**

A tenant or owner-occupant displaced from a dwelling, who has occupied the property for at least 90 days but less than 180 days prior to the FWO, may be entitled to an RHP in the form of an RD or a Down Payment (DP) if the displacee rents, or purchases, and occupies a DS&S replacement dwelling within one (1) year after:

- 1) For a tenant, the date he or she moves from the displacement dwelling.
- 2) For an owner-occupant, the later of:
 - a) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the estimate of just compensation is deposited with the court; or
 - b) The date he or she moves from the displacement dwelling.

Displacees are not required to relocate to the same occupancy status (owner or tenant); they have other options depending on tenancy status and occupancy duration. Only one replacement housing or rental payment shall be made for each dwelling unit, except in the case of multifamily occupancy of one dwelling unit (10.04.17.00).

Occupants, primarily tenants, who do not meet the length of occupancy requirements prior to the FWO or move into the property after the FWO but before actual acquisition is complete, are not eligible to receive an RD. If the occupancy continues until acquisition is complete, the RAP Agent must provide addresses of comparable replacement properties. Only if such housing is not available for 30 percent or less of the displaced households' income would they be entitled to an RD.

10.04.15.01 **Rent Differential (RD) Offer**

The RD is the amount offered to the displacee, in writing, which provides displacees with an estimate of monthly payments they can rely on as they seek replacement dwellings. If the RD offer is not acted on within 180 days, it shall be automatically withdrawn and a new RD will be calculated based on the new monthly rent at the displacement dwelling.

The displacee must be advised in advance that the time period to act on the original RD offer will be withdrawn if a replacement property is not located soon and that the new RD may be more or less than the original RD offer, depending on the market and the monthly rent the displacee has been paying.

10.04.15.02 **Amount of Payment [49 CFR 24.402(b)(1)]**

An eligible displaced person that rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, prior to LRH provisions. Such payment shall be 42 times the amount obtained by subtracting the base monthly rental (10.04.16.00) for the displacement dwelling from the lesser of:

- (i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or
- (ii) The monthly rent and estimated average monthly cost of utilities (10.04.16.01) for the DS&S replacement dwelling actually occupied by the displaced person.

10.04.16.00 **Base Monthly Rent [49 CFR 24.402(b)(2)]**

The base monthly rent for the displacement dwelling is the lesser of:

- (i) The average monthly cost for rent and utilities at the displacement dwelling for the three (3) months prior to the FWO.
 - For an owner-occupant, use the economic rent for the displacement dwelling.
 - if owner rents the property back from the Region/District after escrow closes, use the actual rent paid (including estimated utilities) after a three (3)-month period has passed.
 - For a tenant who paid little or no rent (10.04.16.02) for the displacement dwelling, use economic rent,
 - unless its use would result in a hardship because of the person's income or other circumstances; or
- (ii) Thirty (30) percent of the person's average gross household income (10.04.18.00), or
- (iii) The total of the amounts designated for shelter and utilities if receiving a welfare assistance payment from a program that designates the amounts for shelter and utilities. The portion of the welfare assistance designated for food (e.g., food stamps) is specifically excluded from being considered as income [7 USC Section 2017(b)].

10.04.16.01 **Utilities**

Utilities are defined as expenses for heat, light, water, garbage, and sewer. The term "light" means the cost for electricity for all normal household purposes.

The term "average monthly cost of utilities" means the average monthly cost of the displacee's utility costs for the last 12 months.

The term "estimated average monthly utility cost" means the District's estimate of utility expenses for the comparable replacement property considering its size and location.

The cost for heat is usually included in a natural gas or electric bill. It is appropriate to consider the cost of wood or coal if they are typically used for heat in the area. Liquefied gas is also an appropriate utility expense.

The District is responsible for developing estimated average utility costs related to the replacement comparables. Each district, and often each neighborhood, will have different data sources. The utility companies often have the most reliable information; HUD or local housing agencies may also have useful information. If there are no reliable data sources, then area survey methods are used. Unless absolutely necessary, an area wide survey is not needed. Contacts with local utility companies are usually sufficient.

10.04.16.02 **Calculating Utilities**

The RAP Agent will obtain a list of utilities included in the rental rate from the landlord unless the information was obtained during the FWO and noted on the Owner's Certificate of Tenants. The tenants will be instructed during their First RAP Call to obtain actual costs from their utility providers. Ideally, the utility providers should respond to the tenant's request by sending a formal letter stating that

"monthly average of your actual utility bill for (*type of utility*) for the last 12 months of service at the (*displacement address*) was \$(*average monthly payment*)."

The RHV report must show the utilities included in the displacement rent and the comparable replacement rents. The RD calculation is based on the displacement rent plus the actual average monthly utilities that are the responsibility of the displacee, and the most comparable replacement rent plus the estimated average monthly utilities that would be the responsibility of the displacee.

10.04.16.03 **Little or No Rent [49 CFR 24.402(b)(2)(i)]**

Little or no rent is defined as a rental rate that is unreasonably below the market rental rate for a comparable dwelling in the area. The term “little rent” is defined as 25% below the market rent established in the appraisal.

The provision of little or no rent addresses payment computation for occupants who pay no rent or unreasonably low rent and for whom a payment based on such rent would result in a windfall. If the occupant’s actual rent is below market rent, the RAP Senior must document in the RAP file that no kinship, friendship, or contrivance exists and that the actual rent will be used in the payment computation.

If the RAP Senior determines that a situation exists, such as tenant is providing a service in lieu of all or a portion of rent, or the tenant’s relationship to landlord (e.g., kinship or friendship) may not result in an arm’s length transaction, then economic rent (without including the actual average utilities) must be used to calculate the RD.

However, if the use of economic rent will create a hardship for the displacee, the RAP must use the actual rent and document the RAP file justifying the use of actual rent vs. economic rent.

These procedures do not apply to Department-owned properties where actual rent is less than fair market rent due to the Department’s affordable rental rate policy.

If displacee’s rental rate is lower than market rent because of a public subsidy and the subsidy of a similar private or public subsidy program is available to displacee and will be continued after displacement, the market rent of displacement dwelling is used in the computation. If the subsidy will be discontinued after the tenant vacates, actual rent is used. It must be documented that public housing is not available.

10.04.17.00 **Subsidized Housing**

Rent Differentials for tenants who occupy publicly subsidized rental housing and relocate to private housing or publicly subsidized housing are calculated so a tenant will not receive duplicate payment for a rental subsidy through both the Relocation Assistance provisions and a Federal Rental Subsidy Program. Publicly subsidized housing is defined as:

“Low rent public housing, FHA Sections 221(d)(3), 236 and other existing projects where rates are set on the basis of the tenant’s income.”

Occupants of publicly subsidized rental housing must be identified, and all replacement housing valuations and procedures must comply with the following:

| |
|---|
| <p>Tenant moves from publicly subsidized housing to publicly subsidized housing - the displacement rent and actual replacement rent are the amounts actually paid by the tenant.</p> <p>Tenant moves from privately financed housing to publicly subsidized housing - the existing rent is calculated in accordance with the provisions of Section 10.04.20.00. The replacement rent is the amount the tenant pays for the subsidized housing.</p> <p>Tenant moves from publicly subsidized housing to privately financed housing - the existing rent is the amount the tenant pays for the publicly subsidized displacement housing, not including the supplemental rent furnished by the public agency.</p> |
|---|

The third option is to be used only when it can be documented that DS&S publicly subsidized housing is not available to displacee.

However, if the tenant qualifies for comparable DS&S subsidized housing that is available in the replacement area, but the tenant chooses to rent nonsubsidized housing, the RD is based on what the tenant would have received if relocating to subsidized housing.

10.04.17.01 **Section 8 Security Deposits**

When a displacee moves from Section 8 housing (displacement property) to Section 8 housing (replacement property), the amount of the Rent Differential will be minimal. The displacee may not have funds available to pay the replacement property's security deposit. The RAP Senior can authorize an additional payment for the security deposit, but only after it is determined that the displacee has a financial hardship based on any of the following criteria:

- The household has insufficient funds in the checking and savings accounts to pay the deposit after considering normal household monthly expenses.
- The security deposit on the displacement property will not be returned, or it will not be a sufficient amount to pay the replacement property security deposit.
- Thirty percent of the household's income is less than the security deposit.

The displacee and the landlord must enter into an agreement stating the Department is the recipient of any and all of the security deposit that is due tenant at the termination of their rental agreement at the replacement property (10-EX-31).

10.04.18.00 **Monthly Gross Income**

The RD is based on the lesser of the base monthly rent and utilities at the displacement dwelling OR 30% of the household's average gross income.

To determine if the 30% rule applies, the RAP Agent shall advise the displacee of this method of computing the RD and ask if the actual monthly rent (plus estimated average monthly utilities) of the displacement dwelling exceeds 30% of monthly gross income. If the answer is "no," the Agent annotates the parcel diary. If the answer is "yes," the Agent:

- Secures an Income Certification (RW 10-39) from the displacee using 10-EX-39 as a guide on appropriate sources of income.
- Computes the rental RHP per Section 10.04.15.00.

Monthly gross income is based on all income from all persons over 18 years old for the 12-month period preceding the date of determination of income. Do not include the income of a full-time student over the age of 18 UNLESS that person is the head of the household or the person's spouse.

10.04.19.00 **Income Verification**

When displacees claim that income should be the basis for calculating the RD, all household members with an income must complete the Income Certification (RW 10-39). The date of determination is the First RAP Call.

The RAP Agent must verify all income-based computations by reviewing displacee's income records. [A copy of an income tax return for the tax year preceding the determination should not be the only source for verifying income for the last 12 months. However, it can be used as an indicator of low income if no other documentation is available. The displacee may have to request a copy of their most recent tax return from the State Franchise Tax Board. (Note: Advise the displacee that they may have to pay for the copies.)] Both the Agent and the displacee should review "Gross Income When Calculating Rental Differential" (10-EX-26) prior to completing and reviewing the Income Certification to ensure the appropriate type of income is considered.

The RAP Agent must document the type of documentation used to verify the household's gross income for the last 12 months, such as employers or credit reporting sources, pay stubs, benefit statements, bank deposits, and other periodic receipts of payment.

A diary entry is made indicating the method and result of the income verification. When income has been verified and documented in the District's file, return any documents that were used to verify the Income Certification to the displacee. After the RAP Agent has verified all the information on the Income Certification, a decision must be made as to its validity. Because of the nature of the payments based on income, the burden of proof rests on the displacee. If the RAP Agent has reason to believe the information is incomplete or incorrect because the rent and utilities to gross income ratio is too high (60% to 85%), the file should be documented and the displacee advised that the Rent Differential will be based on the actual rent or the economic rent, with utilities.

Use the following guidance when determining the displacee's ability to pay for monthly living expenses:

| | | |
|--|-----|---|
| The RAP Agent should deduct the actual monthly rent and utilities from the monthly income as stated on the income certification to determine if it is feasible that the displacee has enough remaining funds to pay for daily living expenses. | | |
| Food | 14% | If the household receives food stamps, use 0%. |
| Transportation | 19% | If no one is working outside the home, use 10%. |
| Medical Costs | 2% | If the household receives MediCal or Medicaid, use 0%. |
| Other | 5% | Clothing, nonperishables, ineligible utilities. |
| Minimum % | 40% | 15% if the household receives food stamps, MediCal and no one works outside the home. |
| The RAP Agent can make slight adjustments to the percentage if the displacee's situation warrants same, such as a student living in a dorm or boarding situation, the household is excessively large, the members of the household raise or grow their own food, or several families are engaged in bartering services for food and clothing. However, if the household receives a benefit or service on a regular basis in lieu of all or part of their income (e.g., waiter receives meals at a restaurant, or a bus driver gets to take the vehicle home each night), then the value of that service or benefit must be included in the total household income. | | |

If the documentation provided is determined to be accurate and reasonable, the file must be documented outlining how the 30% was verified and calculated.

Non-tenured occupants MUST provide an Income Certification prior to determining if they are eligible to receive any RHPs.

If any member of the household will not complete their portion of the Income Certification or provide evidence of income, the entire household's income will not be considered in computing the RD.

10.04.20.00 Computing the Rent Differential Payment

The RD is calculated by comparing base rent plus average monthly cost of utilities on the displacement dwelling to base rent plus estimated average monthly cost of utilities on the actual replacement dwelling. If the computed rental assistance payment exceeds \$5,250, see 10.04.23.01.

The utility cost used to verify "spend-to-get" in the actual replacement property is the amount of the estimated average utility costs used in the calculation of the RD. It is not necessary to determine the estimated average utility costs in the actual replacement area.

| EXAMPLE | |
|--|-------------------|
| Displacement Rent | \$400 month |
| Average Cost of Utilities | <u>150 month</u> |
| Base Monthly Rent | \$550 month |
| Most Probable Comparable Rent | \$500 month |
| Estimated Average Cost of Utilities | <u>175 month</u> |
| Comparable | \$675 month |
| Scenario 1: | |
| Actual Replacement Rent | \$475 month |
| Estimated Average Cost of Utilities | <u>175 month*</u> |
| Actual Replacement Rent | \$650 month |
| Must pick the lesser of Actual Replacement Rent or the Comparable to calculate the RD = \$650 - \$550 x 42 months = \$4,200 | |
| Scenario 2: | |
| Actual Replacement Rent | \$550 month |
| Estimated Average Cost of Utilities | <u>175 month</u> |
| Actual Replacement Rent | \$725 month |
| Must pick the lesser of Actual Replacement Rent or the Comparable to calculate the RD = \$675 - \$550 x 42 months = \$5,250 | |
| * Always use the Estimated Average Cost of Utilities from the RHV when determining "spend-to-get" at the actual replacement. | |

10.04.21.00 **Conversion of Payment [49 CFR 24.403(E)]**

A displacee who initially rents a replacement dwelling and receives an RD may be able to convert their status to homeowner if a DS&S replacement property is acquired within the one-year prescribed period (see Section 10.08.02.00).

An eligible 180-day owner-occupant that initially rents a replacement property (see 10.04.14.00) may still be eligible for the full RHP if a DS&S replacement property is acquired within one year of the prescribed period. The “spend-to-get” requirement for the purchase of the replacement property is based on the last RHV. The amount of the RD paid when the initial replacement property was rented must be deducted from PD, MD, and/or IE that the displacee may be eligible to receive.

An eligible 90-day occupant that initially rents a replacement property may still be eligible for a DP if a DS&S replacement property is acquired within one year of the prescribed one-year period (see Section 10.08.02.00). The amount of the RD paid when the initial replacement property was rented must be deducted from the total RD based on the last RHV. The remaining amount can be used as the down payment and incidental expenses subject to limitations described in 10.04.25.01.

However, an eligible displacee who occupies a replacement dwelling that costs less than the comparable property used in the RHV, and would otherwise qualify for the full RHP, cannot relocate into a higher-cost DS&S dwelling at a later time and claim the remaining RHP. Once the replacement property has been inspected and any or all of the RHP paid, the displacee is vested and the maximum amount of the RHP is established.

| CALCULATING RENTAL ASSISTANCE PAYMENTS | |
|---|---|
| Situation | Method |
| Average or estimated average rent and average monthly utility costs of the displacement dwelling do not exceed 30% of monthly gross income. | Step 1 - Find the lower of estimated monthly replacement rent or actual rent paid on replacement property, including average monthly utility costs. Step 2 - Determine the average monthly rent and average monthly utility costs of displacement property. Step 3 - If Step 2 result is larger than or equal to Step 1, the answer is zero (0). Step 4 - If Step 2 result is smaller than Step 1, subtract Step 2 amount from Step 1 and multiply the result by 42 (months). |
| Average monthly rent on the displacement property, including average monthly utilities, exceeds 30% of monthly gross income. | Step 1 - Find the lower of estimated monthly replacement rent or actual rent paid on replacement property, including average monthly utility costs. Step 2 - Determine 30% of monthly gross income of the displacee. Step 3 - If Step 2 result is larger than or equal to Step 1, the answer is zero (0). Step 4 - If Step 2 result is smaller than Step 1, subtract Step 2 amount from Step 1 and multiply the result by 42 (months). NOTE: When rental assistance payments by other public agencies are involved, the average monthly rent is the amount actually paid by displacee excluding any rent subsidy. Calculate the payment as above. |
| Non-tenured Occupants | Step 1 - Find lesser of calculated replacement rent or actual rent paid on replacement property, including average monthly utility costs. Step 2 - Determine 30% of displacee's gross monthly income. Step 3 - If Step 2 result is larger than or equal to Step 1, the answer is zero (0). Step 4 - If Step 2 result is smaller than Step 1, subtract Step 2 amount from Step 1 and multiply the result by 42 (months). |

10.04.22.00 **Manner of Disbursement [49 CFR 24.402(b)(3)]**

An RD may be disbursed in either a lump sum or in installments. However, the full amount of the RD vests immediately when the displacee occupies a DS&S replacement dwelling and “spends-to-get,” even if there is a later change in the person’s income or rent, or in the condition or location of the person’s housing.

Although rental assistance payments of \$5,250 or less are usually made in one lump sum payment, displacee may request annual installment payments that are not to extend more than 42 months beyond the move-out date.

Disbursement of rental assistance payments in excess of \$5,250 is made in accordance with the last resort housing guidelines.

10.04.23.00 **Rent Differential Payment Procedures - Last Resort Housing (LRH)**

Rent Differential payments in excess of \$5,250 must be paid in accordance with Last Resort Housing provisions. Such payments that do not exceed \$10,000 are usually paid in a single lump sum payment. Payments in excess of \$10,000 are paid in periodic installments.

A displacee may request that installment payments are made even if the Rent Differential is less than \$10,000. The RAP Agent must fully document that displacee requested the installment payment option and any subsequent changes in the manner of payment.

Regardless of the amount, displacee’s Rent Differential is fully “vested” immediately when they occupy DS&S housing and meet the “spend-to-get” requirement, even if there is a later change in the person’s income, occupancy, family characteristics, rental rate, or in the condition or location of the actual replacement property. Recertification of DS&S housing is not required after the initial qualifying inspection.

10.04.23.01 **Lump Sum Payment**

Although last resort housing rental assistance payments of \$10,000 or less are usually made in one lump sum payment, displacee may request annual installment payments that are not to extend more than 42 months beyond the move-out date.

10.04.23.02 **Installment Payments**

Last resort housing rental assistance payments in excess of \$10,000 are to be disbursed in periodic payments as follows:

Rent Differential divided by 7 equals the six-month installment until the balance is less than \$10,000.

| | | |
|------------------------------|-------------------|--------|
| 1 st installment: | date of occupancy | 7/1/01 |
| 2 nd installment: | six months later | 1/1/02 |
| 3 rd installment: | six months later | 7/1/02 |
| 4 th installment: | six months later | 1/1/03 |
| 5 th installment: | six months later | 7/1/03 |
| 6 th installment: | six months later | 1/1/04 |
| 7 th installment: | final payment | 7/1/04 |

EXAMPLE:

Comparable Rent including utilities \$1,500

Displacement Rent including utilities \$ 500

= \$1,000 x 42 months = \$42,000 Rent Differential

Actual Replacement Rent of \$1,550 plus the utilities used to calculate the Rent Differential = \$1,600

Installments:

Advance Payment to Landlord for the security deposit, first month's rent, and last month's rent (if requested by the displacee):

\$1,550 x 3 = \$4,650. Balance of Rent Differential (\$37,350) paid in six-month installments of \$5,335 (rounded). The first installment due within 30 days of displacee's occupancy of the actual replacement property.

In this example, the second through the fifth installments of \$5,335 each would reduce the Rent Differential to \$10,675. When the fifth installment of \$5,335 is due, the remaining balance of \$5,340 could be paid at the same time since the balance is now below \$10,000, or at the displacee's request, it could be paid when the seventh and final installment is due (six months later).

There may be times when it is in the Department's best interest to make periodic payments directly to the landlord. (See Exhibits 10-EX-17, Department/Displacee Agreement for Special Installment Payments, and 10-EX-18, Tenant/Landlord Rental Agreement for Direct Payment.)

RW 10-41 (Computation of Rental Assistance Payment) must show total entitlement, installment amount, and payment periods. Approval of the first installment constitutes approval of the total entitlement and periodic payment schedule.

10.04.23.03 Subsequent Installments

The displacee must be provided with claim forms for subsequent installment payments and the schedule for submitting the claim forms. Displacee must also be advised to inform the RAP Agent of any changes in address or location during the 36-month period.

Thirty days prior to the anniversary date, the RAP Agent shall provide a claim form to displacee. Upon return of signed form, the installment may be paid. No DS&S inspection is required.

If displacee has vacated replacement property and cannot be found after reasonable effort, no further action is taken with respect to that or subsequent installments unless displacee reappears. When payments are suspended because displacee disappears, the RAP Agent shall document the file to show extent and results of efforts made to locate party.

The suspension time counts toward displacee's eligibility for relocation assistance payments; e.g., disappeared for 42 months, no further payments are authorized.

10.04.24.00 RD Payments - Documentation

Documentation in support of the claim should be in the District RAP file, including:

- Claim form, Form RW 10-2.
- Computation of Rental Assistant Payment, Form RW 10-41.
- Current Replacement Housing Valuation.
- Copy of Rental Agreement for replacement property or evidence of rent paid on the replacement property.

10.04.25.00 **Down Payment (DP) [49 CFR 24.402(c)(1)]**

An eligible 90-day occupant (tenant or owner) who purchases a DS&S replacement dwelling may convert the RD to a DP. Even if the Rent Differential is zero, an eligible 90-day occupant is entitled to the minimum DP of \$5,250 if they meet the “spend-to-get” requirements.

A 90-day occupant whose RD is \$5,250 or less automatically qualifies for a \$5,250 DP. If the RD is over \$5,250, the DP is limited to the amount of the RD (10.04.13.01). Example:

- RD \$4,200 = DP \$5,250
- RD \$9,100 = DP \$9,100

A displaced person eligible to receive a payment as a 180-day owner-occupant is not eligible for this payment.

10.04.25.01 **Application of Down Payment (DP) [49 CFR 24.402(c)]**

The DP is designed to help eligible displacees purchase and relocate to DS&S comparable housing. Eligible displacees may be entitled to receive the full amount of the DP if it is applied toward:

- Actual DP - the standard percentage is 20%, but the displacee’s actual DP may be more or less depending on their financial situation and the type of loan. However, the DP from the Department cannot exceed 20% of the replacement property or the amount of the RD, whichever is less.
- If the displacee does not use all of the RD toward the DP of the replacement property, the remaining funds can be used for all standard nonrecurring IE related to the purchase (e.g., fees, escrow charges, inspections, and prevailing loan fees). The balance of the RD cannot be used for recurring costs such as insurance and taxes. Displacee must provide a certified copy of the closing statement to document that the expenses are actual, reasonable, and necessary. Displacees in this category are not eligible for an MD payment, nor an additional IE payment for costs not covered by the DP.

In rare occasions, the displacee’s financial situation may warrant a higher down payment in order to qualify for a mortgage. This could be because of their credit history or the income to loan ratio. Another situation that might warrant a higher down payment is when it is necessary to reduce the PITI on the replacement property to an amount that is closer to the monthly rent they were paying on the displacement property. The RAP Senior prepares an analysis of each displacee’s situation and submits the justification for a higher percentage to HQ R/W for a waiver of the policy.

10.04.25.02 **Conditions (DP)**

The following conditions apply to entitlement of the DP:

- Displacee must meet eligibility requirements in Section 10.04.01.00.
- Displacee may finance by any means or may pay cash.
- Displacee must apply the funds to the DP (not to exceed 20% of the purchase price) and nonrecurring IE, up to the amount of the RD.
- Displacee must pay for anything in excess of the calculated entitlement. The District is not committed to paying for DP actually made or required for a replacement.

10.04.25.03 **Manner of Disbursement (DP)**

If the DP is \$5,250, and the displacee is entitled to the full amount after submitting supporting documentation that all the funds will be used for the down payment and the qualifying incidental expenses, the displacee can be paid directly after the close of escrow on the replacement property, or the funds can be assigned by the displacee to the escrow account. If the amount of the DP is over \$5,250, the RD must be placed into escrow and applied toward the purchase of housing. The only exception is to repay funds advanced by displacee (e.g., credit report, appraisal fee). Displacees cannot be reimbursed for funds deposited with the Offer and Acceptance (a.k.a. earnest deposits).

10.04.25.04 **Conversion of Payment (RD to DP) [49 CFR 24.403(e)]**

A displaced person who initially rents a replacement dwelling and receives an RD that is less than \$5,250 or the full amount (e.g., because an installment payment was made, or the displacee did not “spend-to-get”) is eligible to receive a DP if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed one (1)-year period. Any portion of the RD that has been previously paid shall be deducted from the DP.

EXAMPLE:

Non-LRH (RD = \$2,100)

| | |
|--|---------------|
| DP allowance | \$5,250 |
| Less lump sum rental assistance already paid | <u>-2,100</u> |
| Additional State payment toward DP and eligible IE | \$3,150 |

EXAMPLE:

LRH (RD = \$21,000)

| | |
|--|---------------|
| DP allowance | \$21,000 |
| Less installment payment of RD already paid | <u>-2,100</u> |
| Additional State payment toward DP and eligible IE | \$18,900 |

The remaining cash entitlement must be applied toward the DP or IE for the replacement dwelling being purchased. Escrow instructions must clearly state that none of the remaining entitlement may go directly to displacee.

10.04.25.05 **Down Payment into Escrow**

The following procedures for DPs into escrow are in addition to those outlined above.

If displacee has agreed to buy a replacement, they shall be advised of the amount available and the need to apply all funds to the purchase of a replacement.

When escrow is opened, the RAP Agent must inform the escrow agent of the DP arrangements and must request:

- A copy of the escrow instructions or a similar document.
- The itemized estimate of escrow expenses, if possible.
- A certified copy of the closing escrow statement and Regulation “Z,” if applicable, at the time escrow closes.

After the above information is received and reviewed, the Agent should:

1. Calculate the exact amount of payment.
2. Prepare a claim form and have displacee sign it (Form RW 10-2).
3. Prepare an Assignment of Funds Letter (Exhibit 10-EX-9) and have it signed.
4. Prepare an Escrow Instruction Letter (Exhibit 10-EX-11) to escrow company.

If necessary, the advance payment may be based upon estimated IE with reconciliation at the close of escrow. The RAP Agent should recalculate the DP entitlement and pay any additional costs as soon as they are known, assuring the funds are distributed properly between the loan account and displacee. If correct instructions are given, overpayments will be automatically refunded from escrow. A copy of the certified closing statement is attached when the additional claim is processed.

When escrow has closed, a certified copy of the closing statement is placed in the District RAP file.

10.04.25.06 **Down Payment to Displacee**

When escrow on the purchase of displacee’s replacement closes before the State makes any payments, displacee is paid as follows:

- Calculate the payment as indicated in Section 10.04.06.00.
- Pay only the actual initial DP if less than the calculated entitlement.
- Advise displacee of additional amounts, if any, to which they may be entitled.
- Pay lender directly using an assignment from displacee. If the actual initial DP is greater than the calculated amount, payment may be made directly to displacee.

10.04.25.07 **Incidental Expense for 90-Day Occupants**

When an eligible 90-day occupant decides to purchase rather than rent replacement property, a portion of the DP benefit may be attributed to IE. In LRH situations, these amounts may be substantial. The following factors must be taken into consideration when the District pays for these expenses:

- The cost to displacee must be ordinary and necessary for a buyer to pay in a normal transaction where the replacement dwelling is located. Costs may vary from county to county and city to city within California.
- Loan broker, origination, and application fees are usually all inclusive in the MD reimbursement for homeowner-occupants. For tenants, these fees may be added together and paid to the extent they do not exceed predetermined prevailing loan establishment fees.

Eligible IE must be limited to those nonrecurring costs that would have been reimbursable for the 180-day Owner-Occupant (e.g., loan origination fees, title search, recording fees, but not prepaid expenses such as estate taxes and property insurance) but without the usual restrictions that the amounts be limited to the amount of the displacement mortgage or the value of the comparable replacement property.

10.04.26.00 **Owner-Occupants with Partial Ownership Interests**

When a dwelling is owned by several persons and occupied by one or more owners, the RHP is the lesser of:

- The difference between the owner-occupant's share of the acquisition cost of the acquired dwelling and the actual cost of the replacement dwelling.
- The difference between the total acquisition cost of the acquired dwelling and the amount determined by the State as necessary to purchase a comparable dwelling.

When the partial owner-occupant purchases a replacement that is less costly than the estimated replacement cost and is DS&S for the owner-occupant, then "spend-to-get" is that party's share in the acquisition price plus the PD. The other partial owner that does not occupy the property is not entitled to a relocation assistance payment (RHP, Non-Occupant Owner who Leases Space to Another) except for possible moving of personal property that is stored on site.

EXAMPLE:

| | |
|---------------------|-----------------|
| Cost of replacement | \$150,000 |
| Cost of acquisition | <u>-130,000</u> |
| PD | \$ 20,000 |

Assume there are two partial owners of the acquired dwelling. The partial owner-occupant has a one-half interest in the displacement or $\$130,000 \div 2 = \$65,000$. The total "spend-to-get" for this partial owner-occupant is \$85,000 (\$65,000 + \$20,000).

However, if the RAP Agent determines that the displacee needs to obtain a loan in order to relocate, e.g., in the case of an owner-occupant with a partial interest who must obtain a loan to purchase a replacement property, the cost of obtaining the loan could be considered "necessary" and would be an eligible expense.

49 CFR 24.401(c)(1) requires that the RHP for an owner-occupant with "partial interest" in the property being acquired is computed using the full acquisition cost of the displacement dwelling. To receive the maximum payment, an owner-occupant with a partial interest must spend his or her share of the acquisition payment, plus the amount of the computed RHP, in order to receive the maximum computed RHP. Owner-occupants with partial interests who cannot secure financing or who cannot afford to purchase comparable replacement housing may be treated as tenants and receive an RD. The Department is not required to provide owner-occupants with partial interests a greater level of assistance to purchase a replacement dwelling than what would have been required to provide such persons if they owned fee-simple title to the displacement property.

10.04.27.00 **State Rental Prior to Acquisition**

Whenever a tenant-occupied property has been appraised, the owner has received the Department's offer, and control of the property by the Department (by Grant Deed, Order for Possession, Right of Entry, or other means) is imminent, the District may enter into an agreement with the owner whereby the Department will rent the property if it becomes vacant. Such properties include, but are not limited to, apartment units, commercial buildings, and mobile home park spaces.

The District must consider and document whether or not:

- Comparable vacant rental properties in the subject area are scarce.
- There is a good probability that the property would be re-rented prior to the Department gaining control of the property.
- The Department's possible cost of relocation benefits to any subsequent tenants (Non-Tenured) will exceed the cost to rent back the property from the owner.
- Reoccupation of the parcel might delay Right of Way's delivery of the property for construction.

If justified and approved, the Acquisition Agent will offer to rent the property in accordance with procedures in the 08.01.03.00 et seq. of the Acquisition Chapter of the Right of Way Manual.

Rental payments to the owner must cease when the Department gains control of the property.

10.04.28.00 **Mixed-Use Properties**

If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the PD.

Where displacee lives on the same premises as a displaced business, multiresidential property, farm, or nonprofit organization, the residential value must be segregated (10.06.18.00).

10.04.29.00 **Multiple Households of Displacement Property [49 CFR 24.207(e)]**

If two or more individuals are living together and occupying one dwelling unit as one household, the Department is not obligated to provide them with more than one replacement dwelling. Relocation eligibility is based upon the displacee's share of the replacement dwelling.

However, when two or more occupants maintain separate households within the same dwelling, they have separate entitlements to relocation payments. The decision as to whether two separate households were maintained within the same dwelling is a judgment determination by the RAP Senior. The parcel file should be sufficiently documented to support the decision reached.

Issues to consider are:

- The use of the dwelling (sharing of cooking and food storage facilities, bathroom facilities).
- The relationship of the occupants (vs. rental situation - see 10.04.16.02). Note: Students sharing a house together shall be considered as one household per FHWA.
- One or more of the occupants are paying rent to others in the household as evidenced by rent receipts, tax returns claiming a renter's credit, or tax returns claiming rental income.

AND

- It is clear (by signed statements) that the occupants are not moving to a replacement site together.

The payment computation for each household should be based on the part of the dwelling that the household occupies and the space that is shared with others. An attempt should be made to locate similar comparable DS&S living facilities that the households can share - if it is the most cost-effective method. The record should be sufficiently documented to support the decision reached.

See 10-EX-34 for additional guidance on determining multiple households.

Note: If the owner rents or leases a room(s) in the displacement dwelling to another party, there should be no reduction of rooms when considering a most comparable replacement dwelling for the owner.

10.04.29.01 **Multiple Households of Replacement Property [49 CFR 24.207(e)]**

Displacees may choose to rent or purchase a replacement property with another party who is not part of the relocation. Relocation eligibility must be based on the displacee's share of the replacement property. If a displacee enters into a rental agreement with another party, the RAP Agent must determine the percentage of financial responsibility that the displacee has accepted. Generally, each party will be paying one-half of the rent and utilities, so that a one-half share of their replacement dwelling rental rate must be used to determine the "spend-to-get" requirement before paying any portion of the RD.

If the displacee chooses to purchase a replacement property with another person who was not part of the relocation, then the percentage of ownership as indicated in the title documents must be used to determine the "spend-to-get" requirement before paying any portion of the RHP (either PD/MD/IE or a DP). Example: An elderly 180-day owner-occupant chooses to purchase a replacement property with her recently divorced daughter. If title to the replacement property indicates that each has an undivided one-half interest, then the displacee's PD/MD/IE will be based on one-half of the purchase price, mortgage amount, and incidental expenses.

10.04.29.02 **Documentation for Multiple Households**

If there is more than one family in residence in a dwelling unit, the Acquisition or RAP Agent should obtain the following additional information:

- Names of heads of household.
- Makeup of each family.
- Relationship among the various heads of household.
- Number of rooms each family privately occupies.
- Move-in date of each family.
- Amount of rent or other consideration each additional family or individual pays to the owner.

This data is used to apportion relocation payments among the families or make more than one relocation payment when the property is vacated, if necessary. This additional data is also on the Certificate of Occupancy (RW 10-25). Any variation between information previously obtained (e.g., from the appraisal report or appraisal section data cards) and that obtained from the initial RAP interview must be explained in the RAP Diary.

10.04.29.03 **Proration When One Household Splits into Two or More**

Eligible occupants who subsequently separate or divorce and establish separate households, whether by choice or by litigation, qualify for payments as one displaced family.

The payments may be divided between the occupants (husband and wife or other adult household members who are listed on the rental agreement or the title report) in any proportion on which they agree. This requires a written agreement establishing the method of division and the percentage each party may claim. The agreement may not be changed without the written consent of both parties.

EXAMPLE:

Comparable DS&S replacement rent for a 4-bedroom home is \$850/month plus \$100/month for utilities = \$950/month.

Displacement property is 3 bedrooms and rents for \$500/month, which includes all utilities, except electricity, which averaged \$50 per month, for a total of \$550/month.

Household consists of 7 persons: husband and wife on title, husband's father on title, and four children.

RD = \$16,800

Husband and wife choose to separate. The husband's father will relocate with him, which requires a one-bedroom replacement property. The wife will relocate with the 4 children, which requires a 3-bedroom replacement property. The husband and wife agree to split the RD and the FMS in half. The husband will be entitled to one-half of the RD if he rents a one-bedroom for at least \$425/month. With the added utilities of \$50 (one-half of the estimated \$100), he will be entitled to \$8,400. The wife must spend at least \$425/month (plus utilities) on a 3-bedroom DS&S replacement property to be entitled to one-half of the Rent Differential.

Separated or divorced displacees may agree to divide moving costs differently than other RHPs. All other RHPs, however, must be based on the same percentage division. For instance, the parties may agree on a 90%-10% division of moving costs and a 50%-50% split of other payments. They cannot agree that one party may receive 70% of the purchase differential and 10% of the IE.

Payments of moving expense can be based on actual costs or scheduled room-count method, but the two methods cannot be mixed. Payments are not made until all occupants have vacated the property except that partial payment can be made if denial will cause a hardship. The District has the option to issue a Notice to Vacate to any remaining occupants.

If the parties cannot reach agreement, entitlement is calculated as if they relocated together. Payment is determined by type of eligibility established by the first party to relocate and file a claim. Although only one party needs to sign the claim forms, checks must be payable to both individuals.

EXAMPLE:

The tenants are eligible for moving expenses and may be eligible for either an RD or DP. If the first party to relocate elects a rental unit and files a claim for payment, the family maximum entitlement is based on this specific type of relocation. No other claim will be honored by the Region/District except where the initial claim was less than the maximum entitlement and the parties eventually reach agreement and file amended claims within the normal filing period.

If a divorce or separation occurs and one spouse vacates the property prior to the initiation of negotiations, the spouse who remains in occupancy is eligible for all relocation benefits that may accrue.

See Exhibit 10-EX-25.

10.04.30.00 Seasonal Residents [49 CFR 24.301]

Persons owning or renting seasonal residences are generally not eligible for any relocation payments other than for moving expenses. A seasonal residence can be distinguished from a domicile in that a domicile is the place of a person's fixed, permanent home and principal establishment and to which place the person, when absent, has full intention of returning. The occupant of a seasonal residence could receive actual moving expenses or a fixed move payment, but is generally not eligible for RHPs.

10.04.31.00 **Non-Tenured Occupants**

A non-tenured occupant is a residential occupant(s) that does not meet the minimum occupancy requirement such as residential occupants of less than 90 days, or any occupants who move into the property after initiation of negotiations. Non-tenured occupants must be in occupancy on the day the Department obtains control of the property (close of escrow, effective order of possession, effective right of entry) in order to receive monetary benefits.

Even though these occupants are not eligible for relocation benefits until the Department has control, the RAP Agent should provide the potential displacees with a Notice of Eligibility - Non-Tenured Occupant (RW 10-14) that states they must remain in occupancy until the Department has control or they will not be entitled to relocation assistance payments. The RAP Agent must also provide a 90-Day Information Notice but without addresses of comparable properties, since their eligibility for relocation assistance payments has not yet been established. At the first meeting with the potential displacees, the RAP Agent can obtain preliminary information that will help in determining possible relocation payments. Such information may include legal residency, income, household numbers, and/or functional needs. The RAP Agent must verify all information on the date the Department obtains control prior to providing any entitlements.

In addition to the Conditional Entitlement Letter for Non-Tenured Occupants (RW 10-15), the RAP Agent must provide the non-tenured occupants with a 30-Day Specific Notice with a date certain and addresses of comparable replacement property. The RAP Agent should coordinate the RAP notices with the Property Management function to ensure appropriate vacating documents are also provided to the non-tenured occupants.

RESIDENTIAL DEFINITIONS

Dwelling [49 CFR 24.2(h)]: The place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

Mortgage [49 CFR 24.2(m)]: Such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which real property is located, together with the credit instruments, if any, secured thereby.

Owner of a Dwelling [49 CFR 24.2(p)] A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

- (1) Fee title, a life estate, a land contract, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
- (2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
- (3) A contract to purchase any of the interests or estates described in Subparagraphs (p)(1) or (2) of this section; or
- (4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

Person [49 CFR 24.2]: Any individual, family, partnership, corporation, or association.

Tenant [49 CFR 24.2]: A person who has the temporary use and occupancy of real property owned by another.

Life Estate [49 CFR 24.2(p)(1)] A person who holds a life estate has the right to occupy a property for life. Many times, a life estate is retained by a person who has been granted such right by a grantor or who conveys the remainder interest to another person. The computed RHP may depend upon distribution of the acquisition payment in accordance with state law, but should be sufficient to enable the displaced person to relocate as an owner with an interest at least equivalent to the interest held prior to the acquisition of the property. The payment computation will be based on the total amount of the acquisition payment for a dwelling comparable to the acquired dwelling.

10.05.00.00 - MOVING AND RELATED EXPENSES - NONRESIDENTIAL
(Business, Farms, and Nonprofit Organizations)

10.05.01.00 **Relocation Benefits**

Any business, farm operation, or nonprofit organization (nonresidential) which qualifies as a displacee (49 CFR 24.2(d)(I)(k)(p)(v)) is entitled to relocation benefits if the acquisition of the property in whole or part causes a need to relocate the operation and/or personalty to another location. Relocation can be to the remaining portion of the property if a partial acquisition has occurred. (See 10.05.12.01: Reestablishment payments for moves to the remainder.)

Relocation benefits are limited to advisory assistance and payments for actual moving and related expenses as the Department determines to be reasonable and necessary. The majority of this section describes the specific moving entitlements.

The Uniform Act does not require that nonresidential displacees be made whole and thus they receive fewer benefits under the Uniform Act than residential displacees. Payments are limited to just moving and related expenses, with no provision to assist in acquiring a replacement property (similar to the residential RHP). However, nonresidential displacees may qualify for a Reestablishment Payment to mitigate some of the expenses associated with establishing their operation at the new site (10.05.12.00).

10.05.01.01 **Persons Not Lawfully Present in the United States**

Moving expenses for an unincorporated business, farm, and nonprofit organization will be paid if an owner, manager, or operating officer certifies the other owners, signs the claim forms, and provides the necessary documentation for himself/herself. The sole owner of a business, farm, or nonprofit organization who cannot or will not certify as to their U.S. residency status is not entitled to any relocation benefits, including advisory assistance.

Any partnership that includes persons who cannot or will not certify as to their U.S. residency status is not entitled to any relocation benefits, including advisory assistance. The remaining partners are entitled to moving expenses, but the payments must be prorated based on the number of U.S. versus non-U.S. residents. Example: A partnership of five (5) persons, two (2) of which can certify as to their U.S. residency status, will receive 2/5ths of the actual, reasonable, and necessary expenses. This proration must be applied to all moving expenses, including reestablishment, search expenses, and the in-lieu payment.

Moving expenses for an incorporated business will be paid if the corporation certifies that it is authorized to conduct business within the U.S.

10.05.02.00 **First RAP Call**

A nonresidential displacee, owner, or lessee is entitled to the same information in the same time frame as the residential displacee. An explanation of benefits to an owner must be made at the FWO, and within 14 days to a tenant/lessee. In addition to the Occupancy Certification (RW 10-25), the RAP Agent must obtain a Certification of U.S. Residency (RW 10-44).

During the first call, the RAP Agent must look at all personal property on the displacement parcel and request a certified inventory of these items from the displacee. The Agent should note in the diary the general nature of the operation and the type of personalty. The Agent should review the Appraisal and the Right of Way Contract to determine which items are being treated as realty and which items are personalty.

10.05.03.00 **Advisory Assistance**

49 CFR 24.205(c)(2) requires that a minimum level of advisory assistance be provided to a nonresidential displacee which includes the following:

- a. **Determine Need:** The RAP Agent should obtain enough information about the nonresidential displacee's operation to determine the type of relocation assistance that it will need to resume operations at the new site, such as zoning requirements, licensing requirements, environmental restrictions, type of site improvements needed, and the appropriate time frame and timing to relocate. An on-site inspection and an interview with the nonresidential displacee are the best way to obtain the information on the requirements it will have to relocate to the replacement site.
- b. **Provide current and continuing information:** The RAP Agent should provide the nonresidential displacee with possible addresses of replacement sites that will accommodate their operation based on their needs as determined in item a. The RAP Agent should obtain feedback from the displacee for each replacement site offered to ensure that the information provided meets the needs of the displacee. In addition, the information should be updated and revised based on changes in the market and need expressed by the displacee's feedback. Referral to a real estate broker does not satisfy the requirement that the RAP Agent continuously work with the displacee to provide information on replacement sites. The RAP Agent has an obligation to keep in close contact with the displacee during the entire relocation process even if the nonresidential displacee does not immediately accept the offer of assistance at the First RAP Call.
- c. **Minimize hardship:** The RAP Agent has a responsibility to work closely with the nonresidential displacee to minimize the hardships of relocating to a replacement site. The nonresidential displacee who relocates may experience a decrease in operations due to downtime or limited hours during its search for a replacement site, or during the actual move and reestablishment at the replacement site. This downtime may also impact employees' hours and service level to customers. The RAP Agent can mitigate some of the hardships by obtaining accurate information on the moving options, requesting bids from qualified moving companies and specialized contractors, being on site when moving companies are preparing estimates, and monitoring the move at the displacement and replacement sites. The RAP Agent is obligated to provide ongoing advice relative to planning the move, explaining various methods to accomplish more specific objectives and help with resolving encountered problems.
- d. **Research and supply compatible aid programs that could be of benefit:** The RAP Agent should maintain a current list of services that are available to nonresidential displacees such as Small Business Administration (SBA), Service Corps of Retired Executives (SCORE), California Minority and Women Business Enterprise (M/WBE), Department of Housing and Urban Development (HUD), Farmers Home Administration (FHA), local Chamber of Commerce, local development commissions and property management firms, as well as lists of specialized moving companies and professional moving consultants that can be of use to the displacee. The RAP Agent should explore all possible sources of relocation planning, counseling, and financing that may be utilized by the displacee. Local officials should also be encouraged to provide incentives for the displacee to relocate within the community, if only to avoid adverse economic impacts due to a loss of jobs and a corresponding increase in unemployment. Local agencies can provide incentives such as being flexible with zoning and building requirements, offering tax abatements or special financing, or waiving Conditional Use Permit fees.

The ability to assist a nonresidential displacee depends on the RAP Agent's knowledge of the business, how it functions and what it requires to be successful. As such, RAP Agents should devote a considerable amount of time to meeting with the nonresidential displacee and obtaining a thorough knowledge of the operation.

The Relocation Assistance Brochure is a good tool for guiding discussion during the First RAP Call and subsequent meetings. In addition, the Notice of Eligibility provides written reinforcement of the explanation of benefits and level of advisory assistance. The RAP Agent must specifically point out to the nonresidential displacee the mandatory notification of the displacee's obligation to provide an inventory and permit monitoring of the move as noted in 49 CFR 24.303(b).

10.05.04.00 **Moving Expenses**

10.05.04.01 **Transportation of Personal Property**

Eligible displacees are entitled to the cost to transport personal property and other items of personalty not acquired (e.g., trade fixtures, inventory) to the replacement property, not to exceed 50 miles from the displacement property. The Department may extend the 50-mile limit if no other replacement property was available or suitable for the displaced business, farm, or nonprofit organization.

Transportation includes packing, unpacking, crating, and uncrating, including any special packaging or equipment that must be used to protect sensitive or high valued items (e.g., computers, rare or exotic inventory, and photosensitive equipment).

The displacee executes the agreement with the moving company, vendor or specialist, and may assign reimbursement for the preapproved amount directly to the moving company, vendor or specialist. The Department does not enter into the agreement between the two parties.

10.05.04.02 **Disconnecting/Dismantling**

Displacees may also be entitled to the cost to move all non-acquired personalty which also includes disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery and equipment. It also includes connection to utilities available nearby.

10.05.04.03 **Utility and Service Lines**

Another possible moving expense is the cost of modifying utilities in the replacement property and may also be an eligible moving expense. Utilities may include the following internal service lines: water, gas, electrical, compressed air, vacuum, vent, sewer, and oil. They may be located overhead, underground, or on the surface. Some costs associated with these utilities are eligible moving expenses (under Reconnection or under Modifications), others are eligible for reimbursement only as part of the Reestablishment Payment (10.05.12.00).

The cost of installing the typical service connections is not an allowable expense such as: utility distribution centers (water meters, gas meters, and main electrical service panels), perimeter and overhead electrical outlets for lighting and power, normal gas or water lines. From a RAP viewpoint, these in-place service connections are real property improvements and the values associated with them become part of the real estate. Again, these costs become part of the real estate and are not allowable moving expenses. They may be eligible, however, as a reestablishment expense up to \$10,000.

An eligible business or farm is entitled to reimbursement of costs for reinstalling relocated machinery and equipment (M&E) and other personal property, including substitute personal property described in 49 CFR 24.303(a)(12). This includes connection to utilities available nearby and modifications necessary to adapt the utilities at the replacement site to the personal property.

From a relocation standpoint, the Department can pay the cost to connect or hook up any item of M&E or other personal property from the piece of equipment to the nearest available utility connection, but only to the extent these services were required at the displacement property. This connection might be an outlet located nearby or a subpanel located some distance away that is necessary for a particular piece of equipment necessary to the business. The Department can only pay to connect M&E and other personal property (or substitute personal property as noted above) the Department is paying to relocate. All such costs must be actual and reasonable. Items acquired by the State and subsequently repurchased by the displaced business and realty items retained by the owner as specified in the Right of Way Contract are not eligible relocation expenses. The Department will also not pay to connect any newly added items of M&E or for any betterments.

The cost to adapt or convert relocated M&E to a different type of power supply may also be an allowable moving expense. Examples of alternative power supplies include conversion from direct current to alternating current, from three (3)-phase to single-phase, from 440 volts to 220 volts, or from one heat source to another (e.g., from bottled or natural gas to electricity). Examples of ways to adapt either the M&E or the power supply include new motors, transformers, rectifiers, and similar equipment necessary to accomplish the required conversion. Except in unusual circumstances, actual payment shall be limited to the least expensive alternative; that is, the cost to adapt the M&E to available utilities or to provide compatible utilities to the existing M&E.

Expenses for providing utilities from the right of way to the building or improvement are excluded. This is a Reestablishment Expense.

10.05.04.04 Telephone Equipment

Businesses may be reimbursed for the following telephone service fees/costs if incurred in the relocation process:

- Reconnection of Existing System
- Purchase of New System (if old system was pulse type and relocation site only accepts Touch-Tone phones)
- Long Distance Service Transfer Fees
- Computer and Data Dedicated Lines

If a business is able to relocate its existing system to its new location but chooses to purchase/lease a more elaborate system, a credit for phone relocation costs is provided toward the new system.

If a new system is the only alternative for the business, the RAP Agent should obtain two bids to document the reasonableness of the charges. In all cases, the file shall include a description of the existing phone system including:

- Number of phones, regular dial, multi-line, push button, PB + Hold, PBX.
- Special features such as hold, call forward, and conference calls.
- Names of local and long distance companies and representatives, if assigned.

Telecommunications (data) and tele-video installations require special handling and should be separately inventoried and documented.

10.05.04.05 **Modifications to Personal Property**

Displacees may be reimbursed for the cost of adapting personal property to the replacement structure, the replacement site, or the utilities at the replacement site. To be reimbursable, costs for personal property modifications must be necessary, unavoidable, and reasonable.

The modifications authorized by this section must be clearly and directly associated with the reinstallation of the personal property, and cannot be for general repairs or upgrading of equipment because of the personal choice of the displacee.

Costs for repairs, modifications, or improvements to the replacement real property due to the requirements of laws, codes, or ordinances can only be paid as a Reestablishment Expense.

10.05.04.06 **Physical Changes at New Location**

Displacee may be reimbursed the cost of making physical changes in or to a building to which a business concern relocates.

Provisions and Limitations: Displacee may be eligible for reimbursement of costs to make physical changes at a new location as a moving expense under the following provisions and limitations:

- The physical changes must be necessary to permit the reinstallation of machinery or equipment or substitute machinery or equipment necessary for continued operation of the business.
- The cost of foundations and concrete pads or other similar construction required for reinstallation of relocated or substitute machinery or equipment may be eligible provided construction is necessary for proper operation of the equipment and compensation for a similar installation was not made as part of the price paid to acquire the former property.
- Changes in or to a building or structure may not increase the value of the building or structure for general purpose uses, may not increase the structural or mechanical capacity of the building or its components beyond the requirements of specific types of equipment moved from the old location or replaced with a substitute, nor include building or structural alterations required by local building codes and ordinances. No relocation payment for structural change shall be made for any items that were paid for on the acquired property.

Items acquired by the Department but repurchased by displacee and realty items contractually retained are not eligible for payment.

Claiming Costs for Physical Changes: To qualify for reimbursement, the displaced business must submit the following documentation before the move:

- A detailed description or drawing of the old and new installation.
- A copy of all instructions given to the contractors.
- A statement explaining why the physical change is necessary and applicable codes and ordinances, if any.

The RAP Agent will:

- Review the documentation and determine whether the physical changes meet the requirements set forth above and whether the costs are reasonable.
- Ensure the Department has not previously paid for the items in the acquisition.

FHWA has provided specific guidance on three specific areas related to changes at the new location.

1. The cost of pits, pads, and foundations can be reimbursed as an eligible moving cost if they are necessary for the reinstallation of equipment or machinery or the installation of substitute items that are necessary for the business operation, unless the value of the pits, pads, and foundations was clearly included in the just compensation paid for the real property. Normally, pits, pads, and foundations only add value to a property for particular business operation and would not generally enhance real property. They should not be included in the valuation of the real property unless the highest and best use of the property being acquired is for the business operation for which it is being used, and the fair market value is determined on this basis.
2. Underground tanks are generally considered realty and purchased as part of the real estate. However, if under State law, the tanks are considered to be personal property, site preparation costs necessary for the installation of the tanks could be considered an eligible moving expense. The site preparation would have to be necessary for reinstallation of the tanks (or substitute tanks), and the installed tanks would have to be required for the operation of the particular business being created.
3. "Plant layout" is an eligible expense with regard to both a move into a newly constructed building or into a preexisting building. These expenses are limited to rudimentary items such as indicating the locations in the replacement building to which personal property is to be moved, and is related to "planning the move of personal property" from the displacement site to the replacement site. The final decision of whether to hire a move cost planner rests with the Department. Eligible expenses do not include architectural or engineering drawings, concepts or considerations at the replacement site, nor do they include plans, drawings, layouts, or other material related to the site acquired by the Department. Further, such expenses are not to be considered as "professional services" under the provisions of 49 CFR 24.304 (a)(9).

10.05.04.07 Storage of Personal Property

A nonresidential displacee MAY be entitled to storage of the non-acquired personalty based on the Region/District RAP Senior's determination that is absolutely necessary in order to vacate the displacee for the project.

49 CFR 24.305(k) specifically excludes personal property on real property already owned or leased by the displaced person, so a displacee cannot be reimbursed the cost to store personal property that was moved from the displacement property to another property already owned or leased by the displacee.

Storage of personalty is not an automatic benefit and should only be authorized when it is in the best interest of the public and the project. The RAP Senior must determine if the storage of personal property is a reasonable and necessary moving expense for the displacee. The determination should be based on the needs of the Region/District, the nature of the displacee's operation, the plans for permanent relocation, the amount of time available for the relocation process, and whether storage would facilitate relocation. It is the RAP Senior's responsibility to set the terms for storage, including prohibiting the storage site's use as a temporary business operating site and the length of time.

Examples of justifiable storage are:

- Displacee has diligently looked for replacement property, but has not been able to locate something because of the unique nature of their operation or organization.
- Construction of the replacement property has been delayed by some unforeseen circumstance, again not the result of the displacee's actions.
- The project's time schedule supports relocating the displacee's personalty immediately, AND the displacee's operation or organization will not be adversely impacted by the storage of their personalty.

The displacee's storage must be preapproved by the RAP Senior based on the maximum period of time the displacee will need before permanent occupancy of the replacement property can take place, up to 12 months. Displacees are not automatically entitled to a full 12 months of storage.

Region/District may authorize a flat storage rate for the displacee's storage based on a market analysis of storage rates for comparable units. The displacee can be reimbursed at the end of the agreed-upon time period after submitting a claim, including invoices and paid receipts. An optional method of payment is for the displacee to execute an Assignment of Funds wherein the Region/District may advance the first and last month's storage rent to the Storage Facility, and make periodic payments (e.g., quarterly) for the agreed-upon time period.

All arrangements for storage should be documented in writing between the Region/District and the displacee, and if applicable, the storage facility.

Displacees are also entitled to the actual, reasonable, and necessary costs to move their personalty into and out of storage, up to 50 miles for each move (including necessary unloading and stacking). The Region/District is only responsible to move the same amount (or less) of inventory out of storage to the replacement site. The displacee must be advised to control their inventory (volume, weight) during the period of storage, or be responsible for the cost to move the additional items.

In unusual circumstances (e.g., displacee's inventory consists of 20 tractor trailers), the market rate analysis for a storage site may consider vacant lots, empty warehouses, or other secure sites.

Extensions beyond 12 months should be rare and only when the displacee's circumstances are so unusual that an additional month or two of storage is warranted.

10.05.04.08 **Move and Storage Insurance**

Displacees are entitled to insurance for the replacement value of the personalty in connection with the move and during storage.

In most situations, the displacee should elect to have the property insured based on its value rather than its weight. The moving company will provide an estimate of the replacement value, which should be confirmed with the displacee before electing that coverage. Special coverage may need to be obtained by the Department or the moving company for sensitive or high valued items of personalty (e.g., moving an antique company's Ming vases).

Direct payments to the displacee as a "self-move" (10.05.09.00) should be based on the lowest of three bids, including an appropriate amount for insurance. The RAP Agent should evaluate the potential risk to the personal property and select the appropriate coverage. A lower cost insurance with a higher deductible would be an appropriate choice when there is a low risk of property loss. Example: The personal property is being moved in seven separate moving vans. The likelihood that all seven moving vans would have 100% of the personal property damaged is highly unlikely. In most cases, the displacee will arrange for any additional coverage through their own insurance company. The Department is not responsible for the highest price coverage, just the most reasonable. However, if there is damage to the personal property and the insurance requires a deductible, the Department must reimburse the displacee for the deductible.

10.05.04.09 **Lost, Stolen, or Damaged Property**

The displacee is entitled to the replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

If the insurance coverage includes a deductible payment, the Department will be responsible for reimbursing the displacee for that amount after the claim for damages has been paid.

10.05.04.10 **License, Permit, and Certification Fees**

The displacee is entitled to the cost of any license, permit, or certification required for the particular business or organization to operate at the replacement location that is not transferable to the replacement property. These fees can be a one-time cost, or a periodic fee. Service charges or nonrefundable fees required by law, licenses, or permits needed to operate at the new location are eligible costs. Examples: day care license, alcohol and beverage control permit, resale license, sanitary inspection certification.

There are no limitations on the costs, which can be reimbursed for licenses, permits, or certifications required of the displacee at the replacement site. The costs participated in should be for those “actual, reasonable, and necessary” items charged by the licensing agency. However, the payment is based on the remaining useful life of the existing license, permit, or certification. Example: A business is displaced from Local Agency “A” and moves to Local Agency “B.” Local Agency “A” required the displacee to have a business license costing \$750 each year. Local Agency “B” charges a slightly higher fee (\$1,000) for their annual business license, but also requires a solid waste permit that costs \$1,200 each year. If the nonresidential displacee moved on July 1, 2003, reimbursement would be based on one-half of the \$750 already paid for 2003 to Local Agency “A,” plus the entire cost of the new solid waste permit that was not required at the displacement site.

It is important to note that fees reimbursable as moving expenses must be related to the business operation, and not to the real property. Ineligible expenses are those costs related to the replacement site such as general occupancy licenses, occupancy permits, building permits, modifications to comply with ADA, or one-time assessments that any business would have to pay for occupancy of a property.

These expenses may be eligible under Reestablishment (10.05.12.00), up to the \$10,000 maximum payment. These are costs that would be incurred by any business entity occupying the real estate and are not directly related to the business operation being displaced.

10.05.04.11 **Professional Services [49 CFR 24.303(a)(13)(iv)]**

Nonresidential displacees may be eligible for reimbursement to hire professional consultants to:

- Plan the move of the personal property (e.g., schematics, time frame)
- Move the personal property (e.g., organize and in phases), and
- Install the relocated personal property at the replacement location.

See 10.05.04.06, FHWA Guidance #3.

Professional services should be arranged for specialty or complex moves (e.g., sand and gravel plant, koi fish farm that are not normally performed by a typical moving company). The consultant should prepare specifications (10-EX-36) that are detailed instructions as to how the move is to be performed in order to minimize the hardships on the displacee, and to be present during each phase of the move.

The RAP Senior must preapprove the use of professional consultants, and require the displacee to obtain bids and Scopes of Work to plan and/or move the personalty to the replacement property. The RAP Senior should review the bids and authorize the displacee to hire the consultant with the lowest bid. As part of Advisory Assistance, the RAP Agent should conduct periodic reviews of the consultant's work to ensure the displacee is receiving adequate service.

Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commission related to the purchase of such site, may be paid under professional services. Commissions may be an eligible expense under Reestablishment (10.05.12.00).

The displacee enters into an agreement with the professional consultant, and may assign reimbursement for the preapproved amount directly to the professional consultant. The Department does not enter into the agreement between the two parties.

The use of a professional consultant does not absolve the RAP Agent from the need to monitor the move.

10.05.04.12 **Relettering and Reprinting**

Displacee's existing inventory of stationery may become obsolete as a result of the move (e.g., new address, new phone number). Relettering signs and replacing stationery on hand at the time of displacement are eligible expenses. Other personalty items that may require changing the printed address or phone number are company vehicles, business cards, yellow page advertisement, and t-shirts or pens that are given to the public. The RAP Agent must determine if there is still some use to the items before authorizing reimbursement for relettering. It is important to note that the Department never confiscates obsolete items.

The displacee may be reimbursed the actual and reasonable cost to conform existing stationery by inking out and stamping in a new address, or the displacee may be entitled to the amount paid (less salvage value where appropriate) for printing a reasonable supply of printed matter to replace those made obsolete by the move. The RAP Agent and displacee should review the inventory on hand (estimating the amount that will be remaining on the date of the move) and reach an agreement on what stock must be modified, what must be replaced, and what can still be used at the new location (e.g., standard invoices, internal memos). The displacee should be advised that such an agreement should be reached prior to making any commitments with a printer for new stock.

10.05.04.13 **Searching for a Replacement Location**

A displaced business, farm operation, or nonprofit organization is entitled to reimbursement for actual expenses, not to exceed the regulatory limit of \$1,000, as the Department determines to be reasonable, which are incurred in searching for a replacement location including transportation, meals and lodging, time spent searching, and fees paid to a real estate professional.

The expenses incurred by the displacee and eligible for reimbursement must be:

- Incurred after the FWO.
- For property that is suitable for the impacted business, not residential properties.
- Itemized on a statement attached to the claim form and incorporated by reference. The statement must list the dates of search chronologically, time spent, location of search, and reason for choosing or not choosing a location.
- Reimbursed at the current maximum State rates for mileage and per diem. Receipts are only required for lodging.

Time spent by the displacee and employees to locate a suitable replacement site can be reimbursed at the average hourly rate per a statement by the displacee. Broker and agent fees must be supported by paid receipts and copies of service agreements, and must be exclusive of any fees or commissions related to the purchase of such site. Commissions may be reimbursable as part of the Reestablishment Payment (10.05.12.00).

Reimbursement for mileage can only be for properties within the 50-mile radius, unless the Region/District determines that there are no suitable replacement properties within the 50-mile area. In such a case, search expenses and the actual move may be beyond 50 miles.

Displacees should use the “Search Expense Summary” to document their time and expenses related to searching for a replacement site, and attach it to their claim.

Note: Search costs are not reimbursable to a business that elects to receive an in-lieu payment.

10.05.04.14 Other Moving Expenses

49 CFR 24 allows the Department to reimburse eligible nonresidential displacees for other moving related expenses that are not listed as ineligible under 49 CFR 24.305. Headquarters R/W must preapprove any additional expenses based on a written recommendation from the R/DDC.

10.05.05.00 Certified Inventory

The nonresidential displacee must provide the RAP Agent with a certified inventory of the personal property eligible for relocation. The inventory should be prepared by the displacee and verified by the RAP Agent, who may choose to accompany the displacee during the preparation of the list. A complex operation (e.g., warehouse or auto parts distributor) may require the use of a professional consultant to prepare the inventory. The RAP Agent should arrange for this service to be performed and pay for the service using a claim form and Assignment of Funds.

The certified inventory must not contain any property classified as realty (and acquired), property on consignment, or real property items that were relocated in lieu of purchase (as reflected in the signed Right of Way Contract). The owner’s certification shall contain a statement as follows:

I, (name of owner), certify that the above listed items represent a true and complete inventory of my personal property located at (address) as of (date).

The RAP Agent should ensure that the owner understands this certification ensures that all the items are personal property, that the displacee has full ownership of the items, none of the items were acquired as part of the realty (e.g., fixtures and equipment), nor were any of the items reacquired by the owner at salvage value.

If personalty located on the displacement property is determined to be consignment goods, the owners of the consignment goods are considered displacees and thus eligible for relocation payments.

The certified inventory should be sufficiently detailed to allow ready identification of all items to be relocated. If an inventory is difficult to describe because of magnitude or complexity, consideration should be given to describing by gross weight, volume, or other reasonable measure, including photographs and videos where appropriate.

In addition, the certified inventory should not include any items that will not be moved and subject to reimbursement under “Adjustments to Move” (10.05.11.00) so that the RAP Agent can obtain the cost to move.

Review 10-EX-32 for “Certified Inventory - Nonresidential.”

10.05.05.01 **Fluctuating Inventory**

Inventories are rarely fixed and the RAP Agent should be aware of the nonresidential displacee's business activity in order to obtain accurate inventories for the bidding and moving processes. There are businesses whose inventory will change seasonally, or even daily. Subsequent to the actual move of a nonresidential displacee, the RAP Agent must review the inventory to establish what had to be moved. Substantial changes from the original or pre-move inventory should be addressed or reflect in an adjusted cost for the move. The inventory stage of the moving process is critical. Early and continuous involvement by the RAP Agent is essential.

The RAP Agent should also be aware of any inventory that belongs to someone other than the nonresidential displacee, such as items on hand for sale under consignment, i.e., convenience gas station, craft or hobby shop, secondhand store.

Due to the length of time between the first written offer and the actual relocation, the RAP Agent must obtain three complete inventories from the nonresidential displacee:

1. Within 30 days of the First RAP Call - in order to obtain accurate bids and provide the nonresidential displacee with a determination of the cost so that good business decisions can be made regarding when and how to move the personal property.
2. Within 30 days of the anticipated move - in order to ensure the lowest qualified bid is sufficient and not excessive to pay the cost to move the personal property that is expected to be on hand on the date of the move.
3. The day of the move - as part of the RAP Agent's responsibility to monitor the moving operation at the displacement and replacement sites.

The RAP Senior can waive the requirement to obtain three separate inventories for noncomplex operations with small inventories when the cost to obtain the inventories may exceed the minor variations in the moving cost.

10.05.06.00 **Move by Commercial Carrier**

Payment is based on actual reasonable cost of a move performed by a commercial mover or contractor. The following procedure shall be followed:

- Either the owner or the Agent will secure at least two firm bids (10.05.06.01) based on the certified inventory (10.05.05.00) from qualified carriers and submit them to the RAP Unit for approval prior to the move. The Agent should accompany the owner and the moving companies during the estimating process. The moving companies should be advised that the Department will pay for the move. Bids must contain the statement noted in Section 10.04.02.09.
- After reviewing and approving the bids, the RAP Agent authorizes the displacee to employ the lowest responsible bidder to perform the move. The displacee may elect to use another mover, but the Department will limit reimbursement to the amount of the lowest bid, OR the amount of the displacee's mover, whichever is less.
- At its discretion, the RAP Unit may secure bids either as a service to the owner or where it questions the reasonableness of the bids submitted or qualifications of the bidder. A moving consultant may be used to evaluate bids for extremely complex commercial/industrial moves when the RAP Unit lacks the expertise to determine reasonableness of the bids.
- The owner shall submit Claim Form RW 10-30 and paid, receipted, and itemized bills to the District after moving from the premises. A responsible employee of the moving company must sign the bills. Written prearrangements or assignments for the Department to pay the mover directly may be used.
- The RAP Agent shall review and approve the bills. Payment of the authorized amount is in accordance with District delegations.

Displacee may authorize the RAP Unit to solicit competitive bids and enter into a contract on their behalf with the lowest responsible bidder to have the move performed. Payment is in accordance with current competitive bid procedures.

10.05.06.01 **Obtaining Bids**

A bid is an offer to perform a specific task at a specific price. It is a lump sum fixed amount to do an identified task. The Department does not solicit estimates to determine the cost to move personal property because they are generally a value or opinion of the cost without actually calculating costs based on weight or size. The RAP Agent should not accept open-ended bids such as time (hourly rate) and materials (price per item).

For a bid to be accurate, the terms of the move and the inventory must be clearly established. Special conditions related to the move, such as time of day, access to and through the building, dismantling and reassembly of complicated items, must be known by all the moving companies who have been tasked to prepare the bid.

Typically, the RAP Agent and the nonresidential displacee work together to select appropriate moving companies and specialists who will provide three bids to relocate the personal property. Each moving company is provided the certified inventory, moving specifications (see 10-EX-36) and afforded an opportunity to inspect the displacement and replacement sites. The moving companies submit the bids to the RAP Agent who will provide copies to the nonresidential displacee.

The RAP Agent determines the most qualified bid based on the cost and the accuracy of the bid. The nonresidential displacee can select any bidder, but the Department's obligation to participate in the costs will be limited to the selected bid.

Moving companies and contractors can also be reimbursed a reasonable fee for preparing the moving or cost estimates.

10.05.06.02 **Bid Adjustments**

Complex moves are likely to require an adjustment to the work schedule or scope. These adjustments may require a change in the amount that the moving company should be paid; however, the RAP Agent must ensure that the adjustments are appropriate before agreeing to pay the moving company more than the bid.

Adjustments that are appropriate are those related to a change in the inventory that requires more or less time by the moving company. Adjustments that may be appropriate are those caused by bizarre circumstances that occur during the move such as a dramatic change in weather that requires more protection of the personal property such as tarps or covered vehicles, or a power outage that shuts down the elevator that is being used to move the personal property.

Adjustments that are not appropriate are those increased costs due to time and materials that should have been considered in the initial bid. Some examples are: narrow steps to depart the building that slow down the move, no loading docks which require renting forklifts or using more laborers. Also, normal business risks are those unforeseen circumstances that are not the fault of the mover, but do not justify an increase in cost to the agency such as a flat tire on the way to a move which causes an hour delay and forces the move into overtime. Anyone in business must accept a certain degree of risk and the business profit is the reward for dealing with these risks.

Sometimes, the delay is due to the nonresidential displacee's intentional or unintentional actions such as not providing immediate access to the personal property, or delaying the dismantling of a piece of equipment that is scheduled for move. The RAP Agent should discuss these issues with the RAP Senior before agreeing to pay the moving company more money because of the nonresidential displacee's actions. The moving company and the nonresidential displacee should have a written contract that protects both parties should one of them fail to perform. The Department does not enter into the agreements with the moving company and the nonresidential displacee, and should not pay additional costs due to the failure of either party to perform.

The RAP Agent should work closely with the moving companies that are providing bids to include the appropriate contingencies in the bids.

Examples of appropriate and unwarranted adjustments:

1. The snowstorm hits at noon with heavy icing of the roads. To be on the safe side, the mover recalls the truck to the warehouse. Another half-day is added to the move.
 - ◆ Adjustment is warranted if the snowstorm is unusual (Sacramento in May); it is unwarranted if snow is a contingency that should have been considered when providing the bid.
2. Summer heat slows the work effort, and the packing and loading takes three hours longer than planned.
 - ◆ Adjustment is unwarranted, as this contingency should have been planned for.
3. The moving personnel forget the dollies and this causes a three-hour delay.
 - ◆ Adjustment is not warranted.
4. The nonresidential displacee shows the moving personnel a storage area omitted in the inventory.
 - ◆ Adjustment is warranted.
5. The moving firm is extremely busy and must send a less experienced work crew, so the move takes 25% longer.
 - ◆ Adjustment is not warranted as this is based on the moving company's business decision.
6. Chairs in the reception area are bolted to the floor, and the mover was not aware of this and sent no tools for removal.
 - ◆ Adjustment is warranted if it was not obvious the chairs were bolted during the bidding process, or that the chairs were to be dismantled before the movers came.
7. On the scheduled day of the move, heavy rain floods the loading dock areas. The carrying distance to the truck causes an increase in total loading time.
 - ◆ Adjustment is warranted.
8. The electrician informs you that he is not sure about the reinstallation of certain items of machinery. He suggests a manufacturer's technician to assist him. You point out that with this added cost, he will not be the low bid. He reminds you that he is in the middle of the move. Any delay in the move will be disastrous.
 - ◆ Adjustment is warranted.

10.05.07.00 Items Not Eligible for Move

Items identified as realty (including trade fixtures) in the appraisal, even if retained by the owner at salvage value, are not eligible for moving. Machinery and equipment identified in the M&E appraisal is usually acquired by the Department and is also not eligible for moving expense.

However, items not acquired through the appraisal process are eligible for moving expenses.

Refer to 7.08.06.08.

10.05.08.00 **Notification and Inspection [49 CFR 24.303(b)]**

A nonresidential displacee must comply with the certain requirements in order to receive reimbursement for all moving and related costs. The RAP Agent should ensure the displacee is aware of the restrictions and consequences by reviewing the Notice of Eligibility (10-EX-17), especially the conditions that state the displacee must:

- (1) Inform the RAP Agent with a minimum of 15 days' advance written notice of the approximate date of the start of the move or disposition of the personal property. Notification of the actual move date must be received at least three (3) working days in advance.
- (2) Permit the RAP Agent to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move. This includes photographs and videos as appropriate.
- (3) Provide the RAP Agent with a certified inventory of the items to be moved prior to obtaining cost estimates from moving companies, and again at least 15 days in advance of the estimated move date.

The RAP Senior may deny payment if displacee fails to comply with any of the above, noting in the diary and the file that the displacee was advised of the notification and monitoring requirements. However, if the displacee can produce verifiable records, bills, and receipts, documenting actual expenses incurred, and can identify the property moved, it may be difficult to support the denial based on the sole fact that the displacee did not notify the Region/District of the actual move date.

10.05.08.01 **Monitoring**

The Uniform Act requires that all moving expenses be actual, reasonable, and necessary. To assure compliance with these requirements, the RAP Agent must provide surveillance of a move commensurate with its costs. The goal of monitoring is to protect the Department's interest while assisting the nonresidential displacee.

The RAP Unit shall monitor complicated or costly moves to assure that all moving expenses are actual and reasonable and to verify that the items of personal property listed on the owner's certified inventory are moved from the displacement property to the replacement location. If the monitoring activities will involve a significant expenditure of time, the RAP Unit should consider using a resident engineer or private moving consultant.

See 10-EX-37 for additional guidelines on monitoring.

10.05.09.00 **Self-Moves [49 CFR 24.303(c)]**

If the nonresidential displacee elects to take full responsibility for the move of the operation, the Region/District may pay the displacee directly for the moving expenses, based on the lower of two acceptable bids or estimates.

The nonresidential displacee must advise the RAP Agent of their desire to complete all or part of the move themselves at least 30 days before the anticipated date to vacate the property. The displacee must still provide a certified inventory, with a copy attached to the Self-Move Agreement.

The displacee will be paid once all personal property identified has been relocated to the replacement site. Advance payments are discouraged.

The displacee may opt to complete only a part of the move (e.g., moving the office and office equipment) and request the Region/District pay the actual costs to move the remaining property (e.g., inventory in the warehouse, including reassembly of the shelves/racks).

A Self-Move by the displacee does not negate the Region/District's responsibility to pay other related expenses, e.g., search costs, reestablishment, or professional services.

The nonresidential displacee should be advised that a Self-Move will be based on the lowest qualified bid adjusted for profit and overhead. As outlined in 49 CFR 24, Non-Regulatory Supplement 49 CFR 24D, the bid, which includes profit, overhead, or other additional costs that the nonresidential displacee would not actually incur, should be adjusted to reflect the actual expenses that the nonresidential displacee will incur.

10.05.09.01 **Self-Move Based on the Lower of Two Bids**

The displacee who elects to take full responsibility for the move may receive a payment for the moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the RAP Agent, or prepared by a qualified Agent. It may be necessary to obtain several types of bids to cover all aspects of the move (e.g., disassembly/reassembly of the specialized equipment, separate move for computer equipment). The amount of the Self-Move is generally based on the lower of two bids from qualified moving companies for each aspect of the move; however, uncomplicated or low cost moves can be based on one bid or estimate. The bids should reflect only the items on the certified inventory that the displacee has identified as personalty subject to the self-move. The total of the lowest of all the bids should be included in a Self-Move Agreement (10-EX-31).

The agreed-upon amount to be paid for a self-move should never include specialized moving costs that are performed by others; e.g., telephone, fire, and burglar alarm reinstallations. Costs for these specialized operations must be separately itemized and documented for reimbursement following completion of the work. (This does not apply to hardwired fire and burglar alarms since these are normally considered realty.)

The bidders should be advised to provide moving estimates exclusive of their charges for profit and overhead, and include the following statement:

“This estimate was prepared for the State of California Relocation Assistance Program as a basis for determining the maximum reimbursement the displacee may receive to perform a “Self-Move.”

The lowest bid is automatically used as the basis for the Self-Move Agreement.

Note: Moving companies and consultants can be reimbursed a reasonable fee for preparing the moving estimates.

10.05.10.00 **Move Cost Finding [49 CFR 24.303(c)]**

A Move Cost Finding (MCF) must first be prepared by either:

- 1) Another Region/District R/W Agent who is not the assigned Acquisition/RAP Agent, and has experience and knowledge in moving costs and methods. A moving consultant hired by the Region/District to prepare the estimate, who has experience and knowledge in moving costs and methods.
- 2) MCFs are limited to \$3,000.

The MCF shall be based on rates charged by professional moving firms. These rates, however, shall not exceed the hourly rate charged by local area commercial movers for laborers, supervisors, craftsmen, and equipment necessary to accomplish the move. The MCF should consider the following:

- Cost of renting vehicles and specialized equipment. If the displacee’s vehicles and equipment will be used, the MCF should use the State’s maximum rate for mileage.
- Direct labor costs (anyone physically involved) computed on the basis of hours worked at the actual hourly rate paid, not to exceed that hourly rate paid elsewhere for the same or similar work.

The amount of the MCF is the maximum amount the Region/District can pay the displacee to move the personal property. The work can be completed by a vendor or by the displacee, at the displacee's discretion, but the amount of the MCF will be the maximum allowable payment. A Self-Move Agreement (Exhibit 11-EX-38) should be executed prior to the displacee initiating any work. Payment, full or partial, cannot be made to the displacee or an assigned vendor until all personal property has been removed from the displacement file.

In some cases (10.04.02.12), an MCF can be prepared for a residential move of high bulk, low valued items that the displacee wants to move themselves.

10.05.11.00 **Adjustments to the Move**

There may be items of personalty that the displacee will not or cannot use at the replacement site. The displacee is entitled to the cost to move all personalty; but if the displacee decides not to move some of the personalty to the new location, there are two optional payments: Payment for Loss of Tangible Personal Property (if the item will not be replaced) OR Substitute Personal Property (if the item will be replaced). (See Table 10.05-A.)

The displacee must identify the items not to be moved on the certified inventory.

This section should not be followed if the nonresidential displacee abandons personal property at the displacement property. (See Section 10.05.25.00.)

10.05.11.01 **Loss of Tangible Personal Property**

Displaced businesses, farms, and nonprofit organizations may be eligible for a payment for the actual direct loss of tangible personal property, which is incurred as a result of the move or discontinuance of the operation. The payment will be based on the lesser of:

1. The fair market value of the item as installed and set up (e.g., wired, bolted, permitted) for continued use at the displacement site, less the proceeds from its sale; or
2. The estimated cost of moving the item, including cost to install and obtain permits, based on the lowest acceptable bid or estimate obtained by the Region/District.

For the displacee to be eligible for this payment, the displacee must:

- Prepare a certified inventory identifying items that will not be moved, and whether it will be replaced at the new site.
- Identify the property NOT to be moved prior to the moving companies preparing their estimates to move all the items to the replacement property.
- Enter into a written agreement (10-EX-31) with the Region/District electing this method of payment and agreeing that the described personal property is not to be moved.
- Make a reasonable effort to sell the described personal property based on discussions with RAP Agent on any restrictions or limitations that must be followed.

- At the time of the move to the replacement property, dispose of the items listed in the inventory in a safe and legal manner (e.g., donation, refuse, sale, and gift). The Region/District is not responsible for removing these items from the displacement site.
- Submit a claim for reimbursement based on the lesser of the cost to move or its fair market value, along with all supporting documentation. Displacee may also submit a claim for reimbursement for costs related to the sale, or attempted sale, of the item, along with all supporting documentation. Note: Said claims cannot be paid until all other personal property has been removed from the displacement site.

To determine the cost to move the item, the moving companies should be advised in advance by the RAP Agent that they will need to prepare TWO estimates—one for all the personal property, and then one for all the personal property EXCEPT the item or items that will not be moved. The difference between the two estimates is the cost to move the item. It is possible that the cost to move a small item, e.g., a desk or a couple of chairs, will be minimal or zero. (See Table 10.05-B.)

When calculating the approximate cost to move the item, the RAP Agent should ensure that the amount:

- Does not include an allowance for storage.
- Does include all other related moving costs such as packing, unpacking, dismantling, and reassembly, including utilities and modifications to the personalty. (See 10.05.04.02 and 10.05.04.07.)
- Is based on a maximum of 50 miles. Note: If the business or farm operation is discontinued, the moving cost will be based on the maximum of 50 miles.
- That the value of the goods held for resale is based on the cost to the business, and not the sales or listed price.

The owner of the property is entitled to payment for reasonable costs incurred in attempting to sell an item that is not being relocated (limited per 10.05.11.03). Payment may be made only after the owner has made a bona fide effort to sell the item, though the District RAP Senior can waive the requirement to sell. The sales price, if any, and the actual, reasonable costs of advertising and conducting the sale shall be supported by copies of the bill of sale or similar documents and any advertisements, offers to sell, auction records, and other items supporting the bona fide nature of the sale.

| Table 10.05-A Differences between Loss of Tangible Personal Property AND Substitute Personal Property | |
|---|--|
| Business is discontinued or the item will not be moved and is not replaced in the relocated business = LOSS OF TANGIBLE rules. | Payment is the lesser of: <ul style="list-style-type: none"> • Fair market value of the item for continued use at the displacement site minus the proceeds from its sale. • Estimated cost of moving the item, not to exceed 50 miles, with no allowance for storage. If the business is discontinued, the estimated cost is based on a moving distance of 50 miles. |
| Business is relocated and an item of personal property used as part of the business is not moved, but is promptly replaced with a substitute item at the replacement site = SUBSTITUTE rules. | Payment is the lesser of: <ul style="list-style-type: none"> • Cost of substitute item, including installation costs at replacement site, minus any proceeds from sale or trade-in of replaced item. • Estimated cost of moving and reinstalling the item, not to exceed 50 miles, with no allowance for storage. |

| Table 10.05-B = EXAMPLE OF LOSS OF TANGIBLE PERSONAL PROPERTY | |
|--|-----------------|
| An eligible business, "J&J Temporary Services," determines that the document shredder will not be moved to the replacement site because of its condition and the displacee will not replace it at the new location. | |
| Fair Market Value of the Document Shredder based on its use at the current location | \$1,500 |
| Proceeds: Price received from selling the Document Shredder | <u>- \$ 500</u> |
| Net Value | \$1,000 |
| OR | |
| Estimated cost to move based on the following information: | \$ 150 |
| The lowest move estimate for all the personal property - \$5,000, compared to the same bidder's estimate to move all the personal property minus the document shredder - \$4,900. The difference is only \$100 because moving the shredder did not take a lot of extra time, effort or equipment on the mover's part, so the difference is minimal. Add the estimated cost for disassembly/reassembly based on an estimate from a document shredder service company - \$50 to reset the machine at new location. | |
| Based on the "lesser of," the amount of the "Loss of Tangible Personal Property" = | \$ 150 |
| In addition, the displacee is entitled to the reimbursement for all reasonable costs incurred in selling the document shredder (e.g., a couple of flyers at used office equipment stores and an ad in the local paper for \$50) based on supporting documentation. | |

The trade-in value of old equipment may be used instead of the net proceeds of the sale. Amounts received in trade, net proceeds of the sale, and estimated cost of moving must be documented.

The displacee is not entitled to a payment for Loss of Tangible Personal Property for:

- M&E that is classified as realty but is retained by displacee, nor
- Cost of moving structures, improvements, or other real property of which the displacee reserves ownership.

10.05.11.02 **Substitute Personal Property**

If an item of personal property, which is used as part of the business, farm, or nonprofit organization, is not moved, but is promptly replaced with a substitute item that performs a comparable function at the replacement site, the displacee is entitled to payment of the lesser of:

1. The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; OR
2. The estimated cost of moving and reinstalling the replaced item, based on the lowest acceptable bid or estimate obtained by the Department for eligible moving and related expenses, including dismantling and reassembly, and code requirements, but with no allowance for storage.

Estimating the cost to move the item is calculated in the same manner as an item identified under the “Loss of Tangible Personal Property.” See Table 10.05-C.

| Table 10.05-C | |
|---|-----------|
| = EXAMPLE OF SUBSTITUTE PROPERTY | |
| An eligible business, “A&A Construction Company,” determines the copy machine will not be moved to the new location because it is now obsolete, but it will be replaced. | |
| Cost of a substitute Copying Machine including installation costs at the replacement site | \$3,000 |
| Trade-in Allowance | - \$2,500 |
| Net Value | \$ 500 |
| OR | |
| Estimated cost to move, including any disassembly/reassembly, including code requirements | \$ 550 |
| Based on the “lesser of,” the amount of the “Substitute Personal Property” = | \$ 500 |
| In addition, if the displacee had attempted to sell the copier before trading it in, there could be an additional reimbursement for all preapproved costs incurred in the attempt to sell it (e.g., \$25 for advertising it at the “Used Office Equipment Are Us” store). | |

10.05.11.03 **Cost to Sell Personalty**

Reimbursement for costs associated with the sale, or attempted sale, of personalty not to be moved is an additional payment and not included in the “lesser of” calculation. However, reimbursement is limited to those costs that are “necessary.” The RAP Agent and the displacee should discuss limitations to the method of sale. The cost for an auctioneer or an advertisement in the Wall Street Journal is not considered a reasonable expense when selling a low valued or easily disposed of item. The RAP Agent should ensure that the displacee understands that reimbursement is limited to the Region/District’s determination of reasonableness.

10.05.12.00 **Reestablishment Expenses [49 CFR 24.304]**

In addition to the payments available under this section for moving expenses, a small business (see definitions), farm, or nonprofit organization is entitled to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm, or nonprofit organization at a replacement site.

The nonresidential displacee must completely vacate the displacement property and be operating the new operation at the replacement property before this payment can be made. The \$10,000 cannot be advanced to the nonresidential displacee, even if the only qualifying payment is the increased costs of operation during the first two years (item 10 below).

There is no requirement that the displaced nonresidential displacee remain in the same or similar type of business when they reestablish.

The test for reestablishment expenses is not a comparative standard. Therefore, it does not match the amenities or characteristics of the replacement site against the displacement site. Instead, the test is one of necessity, i.e., is the expense necessary to reestablish the displaced business.

Reestablishment expenses must be actual, reasonable, and necessary. Eligible expenses include, but are not limited to, the following:

- (1) Repairs or improvements to the replacement real property as required by Federal, State, or local law, code, or ordinance.
- (2) Modifications to the replacement property to accommodate the business operation or make replacement structures suitable for conducting the business. (Review ineligible items under 10.05.12.01 and 10.05.14.00.)
- (3) Construction and installation costs for exterior signing to advertise the business. (See 10.05.12.04.)
- (4) Provision of utilities from right-of-way to improvements on the replacement site. (See 10.05.04.03 - Utility and Service Move.)
- (5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, paneling, or carpeting. Can include some costs that were ineligible under items (1) and (2) above. Improvements done for aesthetic purposes are not eligible for reimbursement under any provision.
- (6) Licenses, fees, and permits (e.g., Conditional Use Permit) that are not eligible for reimbursement as a moving expense (10.05.04.10).
- (7) Feasibility surveys, soil testing, and marketing studies.
- (8) Advertisement of replacement location (10.05.12.03).
- (9) Professional services in connection with the purchase or lease of a replacement site (10.05.04.11).
- (10) Estimated increased costs of operation during the first two years at the replacement site for such items as:
 - Lease or rental charges,
 - Personal or real property taxes,
 - Insurance premiums, and
 - Utility charges, excluding impact fees [see item (11) below].

In order to meet the 18-month deadline to file a claim, displacees should be advised to submit their claim for these expenses prior to the 24-month period based on projected costs.

The nonresidential displacee must provide copies of documents (e.g., lease agreement, tax bill, insurance statement, utility costs) and proof of payment before the RAP Agent can determine if any or all of the Reestablishment payment can be made based on this eligible item.

- (11) Impact fees are a one-time, up-front assessment for anticipated heavy utility usage. Since impact fees have an effect on fair market value considerations for both developed and undeveloped business properties, the cost of the fee should be reflected in the eventual resale of the property.
- (12) Other items that the Region/District may consider as necessary expenses related to the reestablishment of the business (e.g., escrow and title fees to acquire the replacement property, SBA loan fee, and ADA compliance).

When discussing the payment of claims under this provision, the RAP Agent should ensure the claimant fully understands that items claimed must be reasonable and necessary and that substantiating documentation must be attached to the Claim (RW 10-34). Refer to “FHWA Guidance on Reestablishment” for further guidance (10-EX-30).

The RAP Agent must provide the Acquisition Agent with a completed RW 10-38 whenever a Reestablishment Payment has been made.

Reimbursement of claims under this provision is not made to business owners or tenants that claim an in-lieu payment.

10.05.12.01 **Reestablishment Payments on the Remainder**

Reestablishment payments can be paid to a business that must reconfigure or make modifications to the remainder in order to accommodate the displaced portion of the business. The RAP Agent must make sure the payments are based on the list of eligible reestablishment expenses, and are not a duplication of a portion of the acquisition payment that was based on cost to cure or damages.

10.05.12.02 **Ineligible Reestablishment Expenses [49 CFR 24.304(b)]**

The following is a nonexclusive listing of reestablishment expenditures ineligible for reimbursement:

- (1) Purchase of capital assets, such as office furniture, filing cabinets, machinery or trade fixtures.
- (2) Purchase of manufacturing materials, production supplies, product inventory, or other items used in the normal course of the business operation.
- (3) Interest on money borrowed to make the move or purchase the replacement property.
- (4) Payment to a part-time business in the home which does not contribute materially (10.05.26.00) to the household income.

Except as specifically stated under 24.303(a)(3) and 24.304(a)(2)(5), physical changes to the real property at the replacement property are not eligible for reimbursement. The RAP Agent must be extremely careful in reviewing and approving proposed capital improvements to the replacement property that are not specifically listed above (1), (2), and (5). New construction items, such as roofs, bathrooms, storage areas, do not qualify as a reimbursable expense because the cost will be recaptured when the improved property is sold. General construction items, such as repairs to the roof, electrical system, exterior structure, are also not reimbursable unless specifically related to the operation of the machinery and equipment. Improvements to leased properties can lead to a misuse of the Reestablishment payment if the \$10,000 is spent on improvements the landlord should make in order to lease the site, or because of agreements the displacee may have for a lower lease rate if improvements are made to the property.

10.05.12.03 **One-Time Advertisement of Replacement Location (Reestablishment)**

The RAP Unit must determine the amount is reasonable and necessary for the business to retain current clients and must approve the amount before it is incurred.

An example of an approved claim is a one-time newspaper announcement that a hairdresser has moved from one beauty shop to another. Individual mailing of a one-time announcement to the individual customers may also be necessary. Another example is a lawn mower repair shop that does not regularly advertise in newspapers.

Reimbursement for eligible advertising expenses must be included in the total of reestablishment expenditures, limited to \$10,000.

An unacceptable claim is one from a business that typically uses newspaper, radio, and television advertising on a regular basis. In these cases, a minor change in the business' regular ads can mention the new address.

10.05.12.04 **Exterior Signing**

Eligibility for this payment exists whether or not the business had a sign at the displacement property. However, some sign expense is more properly assigned as a moving cost. A sign designated as personal property at the displacement site is eligible to be moved and reinstalled as a moving expense. Signs that can be relettered or otherwise modified due to the move can be claimed as a moving expense. Erection of signs not eligible as a moving expense can generally be claimed as a reestablishment expense.

10.05.13.00 **Reestablishment Expenses for Non-Occupant Owners**

A small business, farm, or nonprofit organization, including a non-occupant landlord, whose sole activity at the site is providing space at the site to others, is eligible for a Reestablishment Expense Payment up to \$10,000. The owner does not have to own or rent personal property that must be moved in connection with the displacement. Typical examples of leased space are:

- Mobile Home Parks
- Business properties (e.g., warehouses, office space) including bare land used for storage of equipment
- Farms and ranches (or any bare land used for agricultural or livestock grazing)
- Coin operated laundries or any other vending operation (newspapers)
- Residential units

A non-occupant owner is not entitled to moving expenses because the requirements are that they have no personal property stored on the site. The sole reason and use for the property is to lease it to someone else. If a person leases a furnished place, they are not eligible for the Non-Occupant Owner payment.

Note: A landlord who leases furnished residential or nonresidential properties is not eligible for a Reestablishment Payment as a Non-Occupant Owner.

The RAP Agent should provide the Non-Occupant Owner with a Notice of Eligibility (RW 10-17) as soon as its eligibility is determined.

To be eligible for this payment, the displacee must establish that the renting or leasing of space is a bona fide business activity, and not part of a real estate investment or family situation, as supported by the displacee's income tax records (Schedule C).

To ensure the displacee's operation is in fact a business, the RAP Agent should obtain from displacee records that support the status as a business (e.g., copies of income tax records, business license, lease agreements, or any other reasonable documentation). The income from the property must contribute materially (10.05.26.00) to the owner's overall income (see definitions). Thus, all gross income from the displacement property and other rented or leased sites must be at least one-third of all the Non-Occupant Owner's income from all sources.

To be eligible to receive the payment, the Non-Occupant Owner must:

- Not be part of a commercial establishment with three or more locations (e.g., franchise or chain operation).
- Acquire a replacement property within the 18-month time period.
- Lease the replacement property as evidenced by a copy of the new lease agreement.

Eligible expenses are those listed in Section 10.05.12.00 as Reestablishment.

The Non-Occupant can have more than one Reestablishment Payment if two distinct and separate properties are affected by the same project, as long as they are leased as separate entities (e.g., two buildings on one parcel that is leased to two separate lessees for different uses, and two rental units in a condominium complex that are separate and distinct residential units, leased to two separate families). However, one 32-unit apartment building is limited to one reestablishment payment. To receive more than one Reestablishment Payment, the owner must reestablish each operation.

FHWA has determined that the following situations or expenses are ineligible for a Non-Occupant Owner Reestablishment Payment:

- The replacement site cannot be a site that was previously owned or leased by the displacee.
- A lessee who subleases space is not eligible for a Reestablishment Payment.
- A request for reimbursement of expenses incurred by the displacee as a result of the Department acquiring the displacement property.
- Recurring fees (insurance, taxes, MIP, interest) associated with the replacement property.

Note: The Non-Occupant Owner cannot receive an In-Lieu Payment (10.05.15.00) regardless of the determination of eligibility for a Reestablishment Payment under this provision.

10.05.14.00 Ineligible Moving and Related Expenses [49 CFR 24.305]

A nonresidential displacee is not entitled to payment for:

- (a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this rule does not preclude the compensation under "Owner Retention of Dwellings."
- (b) Interest on a loan to cover moving expenses.
- (c) Loss of goodwill, loss of profits, or loss of trained employees.
- (d) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in 10.05.21.00 (10).
- (e) Personal injury.
- (f) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Department.

- (g) Expenses for searching for a replacement dwelling.
- (h) Physical changes to the real property at the replacement location of a business or farm operation except as provided in 10.05.04.06.
- (i) Costs for storage of personal property on real property owned or leased by the displacee.
- (j) Home business that is not the primary site for the business (e.g., realtor or CPA who works at home but the company has a primary location, someone who makes craft items and sells them at other locations or on consignment, or telephone or internet services and sales).

NOTE: If a business is legitimately operated out of a residence that will be relocated, then the relocation benefits should be adjusted to ensure there is no duplication of payment.

10.05.15.00 Small Business In-Lieu Payment [49 CFR 24.306]

A small business displacee may be eligible to choose a fixed payment “in lieu” of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by 49 CFR 24.303 and 24.304.

The In-Lieu Payment for a small business or farm is based on the average annual net earnings, and can range between \$1,000 and \$20,000.

The displaced business is eligible for the payment if:

- (1) The business owns or rents personal property, which must be moved in connection with such displacement and for which an expense would be incurred in such move; and the business vacates or relocates from its displacement property.
- (2) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Department, and which are under the same ownership and engaged in the same or similar business activities.
- (3) The business is not operated at a displacement dwelling solely for the purpose of renting the property (improvements and/or land) to others.
- (4) The business contributed materially (10.05.26.00) to the income of the displaced person during the two (2) taxable years prior to displacement.

49 CFR 24.306 states the business cannot be relocated without a substantial loss of its existing clientele or net earnings. The Region/District will assume that all displacees automatically meet this criterion if the other four criteria are met. (49 CFR 24, Non-Regulatory Supplement 24D #14, August 16, 1999.)

In determining whether two or more displaced legal entities constitute a single business that is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

- (1) The same premises and equipment are shared;
- (2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;
- (3) The entities are held out to the public, and to those customarily dealing with them, as one business; and
- (4) The same person, or closely related persons own, control, or manage the affairs of the entities.

The RAP Agent should consider how the businesses share or separate their operation by looking at the name, purpose, customers, tax records, employees, licenses, permits, phone numbers, and office space.

10.05.16.00 **Farm Operation - In-Lieu [49 CFR 24.306(c)]**

The In-Lieu Payment for a farm operation is not based on the same criteria, calculations, and limitations as a small business except that they must have personal property that must be relocated from the displacement property to another location (not on the remainder). The other requirements that do not apply are as follows:

1. Farms are not subject to the required loss of substantial patronage (though the Department assumes this occurs for all other nonresidential displacees).
2. Farms are not subject to the multiple location requirement.
3. Fixed payments to farms are limited to the operations at the displacement property.
4. Farms must contribute materially to the operator's support, thereby eliminating home or hobby operations.

In the case of a partial acquisition of land that was a farm operation before the acquisition, the fixed payment shall be made only if the Department determines that:

- (1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or
- (2) The partial acquisition caused a substantial change in the nature of the farm operation in that it is no longer the same operation (e.g., there was a dairy operation at the displacement property, and the nonresidential displacee is operating a petting zoo at the replacement site).

10.05.17.00 **Nonprofit Organization - In-Lieu [49 CFR 24.306(d)]**

The In-Lieu Payment for a nonprofit organization is based on the same criteria, calculations, and limitations as a small business, except that any payment in excess of \$1,000 must be supported with financial statements for the two 12-month periods prior to the acquisition. The amount to be used for the payment is the average of two (2) years' annual gross revenues less administrative expenses.

Gross revenues may include membership fees, class fees, cash donations, tithes, receipts from sales, or other forms of fund collection that enable the nonprofit organization to operate. Administrative expenses are those for administrative support such as rent, utilities, salaries, advertising, and other like items as well as fund-raising expenses. Operating expenses for carrying out the purposes of the nonprofit organization are not included in administrative expense. The monetary receipts and expense amounts may be verified with certified financial statements or financial documents required by public agencies.

The organization must have an exempt status with the State or Federal income tax office and must provide proof of its nonprofit status. It can obtain a certificate or other documentation from either the State of California Franchise Tax Board or the Internal Revenue Service.

10.05.18.00 **Calculating the In-Lieu Payment [49 CFR 24.306(e)]**

The In-Lieu Payment is based on average annual net earnings for the last two years. If an in-lieu payment is made, no payment may be made for search costs, reestablishment expenses, actual moving costs, or actual direct loss of tangible personal property. If a business, farm, or nonprofit organization elects to take and is reimbursed for moving costs and later qualifies for an in-lieu payment, the amount of moving expenses previously paid must be deducted from the in-lieu entitlement.

The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the two (2) taxable years immediately prior to the taxable year in which it was displaced.

If the business or farm was not in operation for the full two (2) taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the two (2) taxable years prior to displacement, projected to an annual rate. The displacee shall furnish the RAP Agent with proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence.

Average Annual Net Earnings - include any compensation the business (sole proprietor or partnership) paid to the owner, spouse, or dependents during the past two-year period. For a corporate owner of a business, earnings shall include any compensation paid to the spouse or dependents of the owner with an interest in the corporation. For the purpose of determining ownership, stocks held by a husband or wife and their dependent children shall be treated as one unit.

Compensation paid to the owner is not limited to wages and may include contributions the business makes to pension or profit sharing plans on the owner's behalf.

For any year that has a negative net income, including qualifying compensation (income) paid to the owners, the entitlement calculation will be based on zero for the year, rather than the negative amount.

10.05.18.01 Using Alternate Tax Years to Calculate an In-Lieu Payment

If the net income of a displaced business is very low in one or both years prior to displacement, the payment can be based on a different time period of two consecutive years when the RAP Senior determines it to be more equitable, but not earlier than two years prior to the FWO on the project.

Examples when the tax periods preceding displacement are not representative of the average annual net earnings are:

- During the second year, there was a period of negative income due to unseasonably bad weather or a natural disaster.
- The displacee has only been in business for two years and the first year's income is not indicative of current operations, or the business has only been in operation for a short period of time (e.g., six months). In this case, the existing net earnings income data would be extrapolated and used to project what the net earnings could have been if the business had been in business for a full two years. If the business is seasonal, this fact should be taken into account in the computations.
- Capital improvements or investments were made of such magnitude that it distorts the net earnings.
- The proposed project has caused so many residents to leave the area that the business' net income declines.

10.05.18.02 Documentation from Displacee

The owner must submit a request to have their In-Lieu Payment calculated along with supporting documentation. The RAP Agent should ensure the displacee understands this payment is "in lieu" of all other moving payments.

Certified copies of Tax Returns for the last two years should include the Schedule C (Profit or Loss from Business or Profession) and either Form 1040 (Individual Tax Return for the owner and each corporate officer), Form 1065 (Partnership Tax Return for each partner) or Form 1120 (Corporate Tax Return), as appropriate.

Business owners seeking use of the alternate tax year provision must provide information to support their contentions. They must provide tax returns for the alternate two-year period, the two tax years immediately preceding the year of displacement, and any intervening years that document the decline in net income.

10.05.18.03 **Processing the Request**

The RAP Agent shall process the displacee's request for an In-Lieu Payment as follows:

- (1) Reviews the displacee's request for validity, and requests additional documentation to determine eligibility.
- (2) If displacee is deemed ineligible, rejects the request in writing, stating the reason for rejection and advises displacee of their appeal rights.
- (3) If the request is adequate, calculates the average annual net earnings for the last two taxable years (10.05.18.00). Completes the claim (RW 10-30) entering the amount of the payment.
- (4) Personally delivers the completed claim to displacee with a letter showing amount to be paid. Advises displacee that payment will be made after the property has been vacated - and only if no other moving expenses are claimed.
- (5) Verify the property is vacant.
- (6) After displacee signs the claim, processes it for payment. Returns income tax returns to displacee.

10.05.18.04 Computing Average Annual Net Earnings

Examples of how to calculate the “Average Annual Net Earnings” are calculated as shown:

EXAMPLE A:

| | | |
|------|------------------|------------------|
| 1999 | \$15,000 | Schedule C |
| | <u>\$11,000</u> | Individual 1040* |
| | \$26,000 | |
| 1998 | - \$11,000 | Schedule C |
| | <u>\$10,000</u> | Individual 1040* |
| | - \$ 1,000 | |
| | Adjusted to zero | |
| 1997 | \$15,000 | Schedule C |
| | <u>\$ 3,000</u> | Individual 1040* |
| | \$18,000 | |

The RAP Senior determines the income from 1998 is not indicative of a normal year and uses 1997 as an alternate year.

The average of 1999 (\$26,000) and 1997 (\$18,000) is \$22,000.
The maximum allowable payment is \$20,000.

EXAMPLE B:

| | | |
|------|-----------------|------------------|
| 1999 | - \$15,000 | Schedule C |
| | <u>\$16,000</u> | Individual 1040* |
| | \$ 1,000 | |
| 1998 | - \$11,000 | Schedule C |
| | <u>\$10,000</u> | Individual 1040* |
| | - \$ 1,000 | |
| 1997 | \$10,000 | Schedule C |
| | <u>\$18,000</u> | Individual 1040* |
| | \$ 8,000 | |

The RAP Senior determines the income from 1999 and 1998 is representative of the business' operation, even though the income the owner received in 1999 is greater than the business' loss. The higher amount in 1997 is a result of the owner taking a greater draw and should not be used as an alternative tax year.

The average of 1999 (\$1,000) and 1998 (-\$1,000 which is converted to zero) is \$500. The maximum allowable payment is \$1,000.

* Income from business in question.

10.05.19.00 **No Duplication of Payments**

Since Appraisal, Acquisition, and RAP are equally responsible for assuring that duplication of payments is avoided and that proper charges are made for Federal participation, a great deal of coordination among the functions is necessary. RAP Agents should be familiar with the Acquisition and Appraisal Chapters, which describe the duties assigned to the respective branches.

The RAP Agent must provide the Acquisition Agent with a completed RW 10-38 whenever an In-Lieu Payment has been made.

The subject of no duplicate payments may raise extremely complex issues. All explanations to displacees should be handled with care and caution since the potential for misunderstandings is extremely high.

10.05.20.00 **Compensation for Loss of Goodwill**

Goodwill is defined as the benefits that accrue to a business because of its location; reputation for dependability, skill or quality; and any other circumstances resulting in probable retention of old or acquisition of new patronage. Loss of Goodwill is paid as an acquisition expense, but some of the items considered in calculating a loss of goodwill may also be covered as a relocation expense. Therefore, the District must identify those cost elements of fixed moving costs (in-lieu payments), reestablishment expenses, and Loss of Goodwill payments that are paid, or would be paid, for the same purpose.

10.05.20.01 **Procedures**

A business, farm, or nonprofit organization must be informed that relocation payments are offset against any other similar payment made for Loss of Goodwill.

The RAP Agent should be aware that:

- A goodwill appraisal might be made prior to State's first offer or at some later date.
- Displacee may be eligible for payment of moving and related expenses (10.05.01.00) and reestablishment expenses (10.05.21.00) or a fixed payment in lieu of these two payments (10.05.23.00).
- Moving and related expenses may not be offset against Loss of Goodwill payments.
- Although the relocated parties generally must incur reestablishment costs before they are paid, some known costs, such as increased rent, may be paid prior to actual occurrence.
- If the Loss of Goodwill payment exceeds the in-lieu payment, displacee will only be eligible to receive compensation for Loss of Goodwill plus RAP payments for moving and related expenses.
- If a Loss of Goodwill payment has not been made and the payment to be made is less than the in-lieu payment, displacee has the option of receiving either the in-lieu payment or the Loss of Goodwill plus RAP payments for moving and related expenses and for reestablishment costs not included in the Loss of Goodwill payment.

The RAP Agent should carefully analyze proper and reasonable offset of RAP payments against Loss of Goodwill payments when a goodwill appraisal indicates a loss to the displaced business. The District must fully document all offsets in the parcel file.

10.05.21.00 **Intentionally Left Blank**

10.05.22.00 **Notices to Acquisition**

Immediately after approving an in-lieu payment (Form RW 10-38), the RAP Unit notifies Acquisition of the amount of the relocation payment (in-lieu payment, or the Reestablishment payment and the estimated amount of moving expenses) using RW 10-38, "Notice to Acquisition of In-Lieu Payment or Reestablishment Expenses."

A Business Reestablishment (10.05.12.00) may contain items that could be included in the preparation of an appraisal for Loss of Goodwill, thus the possibility of duplication of payment exists when a Loss of Goodwill payment is made. If reestablishment costs are reimbursed prior to the Loss of Goodwill payment, the RAP Unit notifies Acquisition that a reestablishment payment has been made, using RW 10-38, "Notice to Acquisition of In-Lieu Payment or Reestablishment Expenses," with RW 10-30 attached. This notice is made immediately after the District approves the reestablishment expense for payment.

10.05.23.00 **Hazardous Material**

The following guidelines may be used to relocate hazardous materials that are considered personal property because of their nature and/or containment:

- The costs of analyzing contents of containers prior to removal from the displacement site are reimbursable moving expenses if required by regulation or under the rules of the disposal facility. The analysis should be a reasonable and necessary prerequisite for the move.
- The cost of insuring the shipment is a reimbursable expense.
- Eligible reimbursable moving expenses include the cost of shipping these materials from the displacement site to the replacement site or to the nearest approved disposal site, at displacee's option. The 50-mile limit may be waived, if necessary, under the authority of 49 CFR 24.303(a)(1).
- Fees charged at the disposal site are not federally participating moving expenses. The generator of the hazardous material has a continuing responsibility with respect to future requirements that may arise in conjunction with its storage or treatment. Since this liability was not caused by the Department's acquisition of real property, costs incurred as a result are not considered reimbursable moving expenses. The payment of fees at the disposal site may be a problem for some displacees, and they may decide to abandon the hazardous material. If this is a possibility, the RAP Unit should contact HQ R/W as soon as possible.

10.05.24.00 **Grace Period on Business Property**

The DDC-R/W can authorize grace periods to former owners or tenants of Department-acquired business properties in accordance with the following terms and conditions:

- Grace periods can be granted for an individual parcel, a portion of a project, or an entire project when businesses are undertaken in a market where replacements are difficult to find and orderly relocation creates a need to mitigate business disruption.
- Grace periods are normally a maximum of 60 days and may be shorter if warranted by circumstances.
- Displacees are not required to pay rent during the grace period if they have a commitment to pay rent on a replacement site and they have furnished proof of that obligation to the District.

- The District shall verify the need for the grace period. The need is often related to refurbishment, move time, or equipment installation. Or the need could be time oriented; e.g., a business might have a sales season during which relocation is impractical. A grace period that allows the owner to enter into a rental agreement on the replacement site, to be occupied later, may be justified.
- The specific time or dates of the grace period should be described in the Right of Way Contract or in Property Management's Rental Agreement.
- A business move grace period cannot be authorized on residential property even if the property is qualified for business in-lieu RAP payments.
- A grace period cannot be authorized on farms. Reduced rent or no rent policies on farmlands, granted or exchanged for other considerations (such as maintenance), are not affected by this business move policy.
- A grace period may be authorized on the business use portion of mixed-use properties. The displacee must pay reasonable rent on the nonbusiness portion.
- A grace period based on partial reductions may be used when appropriate. Partial reductions are applied if the business operator is moving to a place of business where rents are less than the existing State rental rate. (If State rent was \$500 and replacement rent is \$400, the State can allow a \$400 per month grace on the State property.) Partial reductions could also be used if owner's move plan entails a phase-in period where the new and the old places of business are operated concurrently.

The District may determine that no reduction is practical when both the replacement site and the State site are producing significant incomes.

The RAP Unit has primary responsibility for administration of the grace period. RAP verifies the dual rent condition of the business and solicits proof of and amount of rent on the replacement site.

The RAP Agent shall advise Property Management by monthly memoranda on the status of the grace period. The RAP Senior must approve those memos, copies of which are retained in the RAP file. The RAP Agent shall make every effort to ensure the grace period is not erroneously extended beyond the time limits of this policy. The RAP Agent shall also communicate with Property Management to the fullest extent about expected grace periods and amounts of rental rates to be covered.

When mixed property grace periods are considered, the RAP Agent consults with Property Management on proper distribution of total rent. Property Management's determination controls the mixed-use property rent proration.

10.05.25.00 Abandoned Personalty

If the nonresidential displacee abandons an item of personal property at the displacement site, the owner is not entitled to moving expenses or losses for the items involved. The displacee is not entitled to reimbursement for moving costs (including adjustments to move under 10.05.11.00) until all personal property has been removed from the displacement site. If property is abandoned, and the displacee will not remove it, then Property Management must be notified of the items and make arrangements for its disposal. The disposal costs cannot be deducted from the displacee's relocation benefits, nor can relocation benefits be denied for eligible expenses just because the displacee did not relocate all the personalty. See Property Management and/or Clearance and Demolition policies and procedures regarding disposal methods and recovering expenses from the owner.

10.05.26.00 Nonresidential Definitions

| NONRESIDENTIAL DEFINITIONS | |
|--|--|
| <u>Salvage Value</u> [49 CFR 24.2(s)]: The probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis. | |
| <u>Small Business</u> [49 CFR 24.2(t)]: A business having not more than 500 employees working at the site being acquired or displaced by a program or project, which site is the location of economic activity. Sites occupied solely by outdoor advertising signs, displays, or devices do not qualify as a business for purposes receiving a reestablishment expense payment. | |
| <u>Nonprofit Organization</u> [49 CFR 24.2(n)]: An organization that is incorporated under the applicable laws of a State as a nonprofit organization, and exempt from paying Federal income taxes under Section 501 of the Internal Revenue Code (26 U.S.C. 501). | |
| <u>Contributes Materially</u> [49 CFR 24.2(e)]: During the two taxable years prior to the taxable year in which displacement occurs, or during such other period as the Region/District determines to be more equitable, a business or farm operation: (1) Had average annual gross receipts of at least \$5,000; or (2) Had average annual net earnings of at least \$1,000; or (3) Contributed at least 33 1/3 percent of the owner's/operator's average annual gross income from all sources. | |
| <u>Business</u> [49 CFR 24.2(c)]: Any lawful activity, except a farm operation, that is conducted primarily: (1) For the purchase, sale, lease, and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or (2) For the sale of services to the public; or (3) As an outdoor advertising display, when the display must be moved as a result of the project; or (4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law. | |
| <u>Farm Operation</u> [49 CFR 24.2(i)]: Any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support. | |

CHAPTER 10

Relocation Assistance Table of Contents

FORMS

| <u>Form No.</u> | <u>Title</u> |
|------------------------|---|
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| RW 10-3 | Relocation Diary |
| RW 10-4 | Hold for Future Use |
| RW 10-5 | Payment Request & Relocation Cost Summary |
| RW 10-6 | Relocation Assistance Appeal |
| RW 10-7 | General Information Notice |
| RW 10-8 | Notice of Intent to Acquire – Owner-Occupant |
| RW 10-9 | Hold for Future Use |
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| RW 10-11 | Notice of Eligibility Letter – 180-Day Owner-Occupant |
| RW 10-11A | Conditional Entitlement Letter – 180-Day Owner-Occupant |
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| RW 10-14 | Notice of Eligibility – Nontenured |
| RW 10-15 | Notice of Eligibility - Personal Property Only |
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| RW 10-18 | 90-Day Information Notice – Residential Occupant |
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| RW 10-26 | Conditional Entitlement Letter - 180-Day Owner-Occupant Mobile Home |
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| RW 10-30 | Claim for Relocation Assistance - Nonresidential |
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| RW 10-34 | Hold for Future Use |

| <u>Form No.</u> | <u>Title</u> |
|------------------------|--|
| RW 10-35 | Hold for Future Use |
| RW 10-36 | Hold for Future Use |
| RW 10-37 | Hold for Future Use |
| RW 10-38 | Notice to Acquisition of In-Lieu Payment or Reestablishment Expenses |
| RW 10-39 | Income Certification |
| RW 10-40 | Decent, Safe, and Sanitary Inspection Report |
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| RW 10-43 | Notice of Eligibility – Nonoccupant Owner Leasing Space to Others |
| RW 10-44 | Certification Concerning Legal Residency in the United States (U.S. Residency Certification) |
| RW 10-45 | Agreement to Occupy Replacement Property |
| RW 10-46 | Hold for Future Use |
| RW 10-47 | Self Move Agreement and Claim Form for Under \$10,000 Acquisition |

| | |
|------|-----------------|
| DATE | FILE REFERENCE: |
|------|-----------------|

Dear _____ :

On _____ , 20 _____ , the Department of Transportation made an offer to purchase the property that you occupied on that date. As the eligible owner-occupant of the property, you are entitled to certain benefits under the Department's Relocation Assistance Program. These benefits are briefly outlined below and are discussed in further detail in the brochure that was given to you. As the owner-occupant of the property on the date of the first offer, your basic entitlements are:

1. **RELOCATION ADVISORY ASSISTANCE:** The Department will assist you in finding a replacement residence.
2. **MOVING EXPENSES:** You may select payment based on:
 - A. Moving Expense Schedule based on number of rooms, OR
 - B. Moving Service Authorization where the Department makes direct payment to an approved commercial mover; OR
 - C. Actual Cost Move by for-hire carrier based on at least two written estimates and receipted bills.
3. **REPLACEMENT HOUSING PAYMENT:** Having owned and occupied the property for 180 or more consecutive days immediately preceding the Department's first offer, you may be eligible for monetary assistance to purchase comparable replacement housing. The replacement housing payment includes a price differential, a mortgage differential, and an incidental expense.
 - A. **PRICE DIFFERENTIAL.** This is to cover the increased cost you may have to pay when you buy a new home. It is the difference between the cost of a comparable replacement dwelling as determined by the Department, or if less, the cost of the replacement dwelling you select, and the price paid by the Department for your home.
 - B. **MORTGAGE DIFFERENTIAL.** To help pay your increased interest cost, if any.
 - C. **INCIDENTAL EXPENSE.** A payment to cover some of the closing costs you may incur in purchasing a replacement dwelling.
 - D. **SPACE RENT DIFFERENTIAL.** You also may be eligible for monetary assistance for the increased cost you may have to pay for space rent at a comparable replacement site.

OR

 - E. If you choose not to purchase a replacement property, you may be eligible for **RENTAL ASSISTANCE** should you rent a comparable replacement property. This payment is in lieu of the Price Differential, Mortgage Differential, and Incidental Expense.

**NOTICE OF ELIGIBILITY LETTER - 180 DAY
OWNER-OCCUPANT MOBILE HOME (Cont.)**

RW 10-22 (NEW 01/2005)

Page 2 of 2

To avoid losing part of all of your relocation benefits, **DO NOT MOVE** from your home and **DO NOT CONTRACT** to rent or purchase a replacement dwelling without first contacting your relocation agent whose name is shown below. You will be given at least 90 days written notice, and the address of at least one comparable replacement property, before you are required to move.

IMPORTANT: To receive the replacement housing payments outlined under item 3 above, you must rent or purchase and occupy your replacement dwelling within one year from the later of the following two dates: 1) the date at least one comparable replacement dwelling has been made available to you, or 2) the date the Department has paid the acquisition cost of your current dwelling (usually the close of escrow on the State's Acquisition). Failure to act within the one year period could result in loss of all replacement housing benefits.

Displacees not lawfully present in the United States are ineligible for relocation payments and assistance. Certification of legal U.S. residency status must be on file with the Department for all household members in order to receive benefits.

Sincerely,

Relocation Agent,

Address

Telephone

ACKNOWLEDGMENT

I was personally contacted by the above agent for the Department of Transportation. I have had the services and entitlements available explained to me. I was further advised that the Department of Transportation Assistance Program is available to assist me if any questions arise or as assistance is needed. I have been given a copy of this form letter.

DATE:

DISPLACEE:

ADA Notice

For individuals with sensory disabilities, this document is available in alternate formats. For information call (916) 654-6410 or TDD (916) 654-3880 or write Records and Forms Management, 1120 N Street, MS-89, Sacramento, CA 95814.

CONDITIONAL ENTITLEMENT LETTER - 180-DAY OWNER-OCCUPANT MOBILE HOME

RW 10-26 (NEW 01/2005)

| | |
|------|----------------|
| DATE | FILE REFERENCE |
|------|----------------|

Dear _____ :

On _____, 20____, the Department of Transportation made an offer to purchase the property that you occupied on that date and you were given written notice of your potential relocation benefits. In addition to the 90-day notice and advisory assistance, you may be entitled to the following monetary benefits:

1. **MOVING EXPENSES:** Depending on your situation, you may select one of the following options. In rare circumstances, you may be eligible for a combination of the following. You must discuss this fully with your relocation agent.
 - A. Moving Expense Schedule based on number of rooms. Your entitlement under this option is \$ _____ based on _____ rooms of personal property. This entitlement includes a dislocation allowance to connect utilities and/or appliances at the replacement site. OR
 - B. Moving Service Authorization where the Department makes direct payment to an approved commercial mover (see attached list of eligible movers for your area). OR
 - C. Actual Cost Move by for-hire carrier based on the lowest of two written estimates you obtain and submit to the Department. Payment will only be made after you submit paid invoices and proof of payment to the Department.
2. **REPLACEMENT HOUSING PAYMENT:**
 - A. Should you choose to purchase a replacement property, you may be eligible to receive a PRICE DIFFERENTIAL based on the cost of a comparable dwelling such as the one located at _____. The maximum price differential you may receive is \$ _____ if you purchase a decent, safe, and sanitary dwelling (as determined by an inspection performed by the Department) with a total cost of \$ _____ or more.
 - B. You may also be eligible for a MORTGAGE DIFFERENTIAL based on the term, loan balance and interest rate of your new mortgage at the replacement site. This payment has limits as established by the prevailing market rate as well as the term, loan balance, and interest rate at the property you now occupy. You must work closely with your relocation agent to fully understand this complex payment.
 - C. And last, you may be eligible for INCIDENTAL EXPENSES that you incur when purchasing your replacement property. This payment is based on your non-recurring, or one time costs related to closing the escrow. It does not assist with your recurring (periodic) costs such as annual taxes, insurance, or warranties. Again, please work closely with your relocation agent as some of the expenses can be deposited directly into the escrow account for your new home.
 - D. SPACE RENT DIFFERENTIAL. You also may be eligible for monetary assistance for the increased cost you may have to pay for space rent at a comparable replacement site.

CONDITIONAL ENTITLEMENT LETTER - 180-DAY OWNER-OCCUPANT MOBILE HOME (Cont.)

RW 10-26 (NEW 01/2005)

3. If you choose to rent replacement property, you may be eligible to receive a RENTAL ASSISTANCE payment based on the "economic rent" of the property you now occupy, and the rental rate of a comparable replacement property, computed over a 42 month period. The RENTAL ASSISTANCE PAYMENT may be zero, but it cannot exceed \$5,250 (or the amount of the Price Differential). If you think you may wish to rent a replacement property, contact your relocation agent for a calculation of this alternate payment. If you choose to rent your home back from the Department after sale to the Department has been finalized, failure to pay necessary rental payments may reduce the replacement housing payment which you will receive.

The Relocation Assistance Program is very complex. It is important that you read and understand the matters explained in the "Uniform Relocation Assistance Program (Residential)" brochure which relate to your eligibility. If at any time in the future you want assistance, please contact your relocation agent by writing, telephoning, or visiting him/her at the address listed on the back of the brochure. To avoid loss of possible benefits, DO NOT commit yourself to purchase or rent a replacement property or move without first contacting your relocation agent.

IMPORTANT: To receive the replacement housing payments outlined under item 3 above, you must rent or purchase and occupy your replacement dwelling within one year from the later of the following two dates: 1) the date at least one comparable replacement dwelling has been made available to you, or 2) the date the Department has paid the acquisition cost of your current dwelling (usually the close of escrow on the State's acquisition). Failure to act within the one-year period could result in loss of all replacement housing benefits.

Displacees not lawfully present in the United States are ineligible for relocation payments and assistance. Certification of legal U.S. residency status must be on file with the Department for all household members in order to receive benefits.

Relocation Agent,

Address

Telephone

ACKNOWLEDGMENT

I was personally contacted by the above agent for the Department of Transportation. I have had the services and entitlements available explained to me. I was further advised that the Department of Transportation Relocation Assistance Program is available to assist me if any questions arise or as assistance is needed. I have been given a copy of this form letter.

Date

Displacee

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CHAPTER 10

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EXHIBITS

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| 10-EX-38 | Self-Move Agreement |

**NONRESIDENTIAL INTERVIEW CHECKLIST
(FIRST RAP CALL)**

(Form #)

1) Determine the Type of Business:

a) Manufacturing -

i) What kind of product? _____

ii) What is the source of materials? _____

b) Wholesale -

i) What kind of product? _____

ii) Transportation requirements? _____

c) Retail -

i) What type of business? _____

ii) Specialty clientele? _____

d) Service -

i) What service is offered? _____

ii) Clientele? _____

iii) Competition? _____

e) Other -

i) _____

ii) _____

iii) _____

2) Ownership:

a) Sole Proprietorship -

i) Sole source of income? _____

ii) Family members employed? _____

b) Partnership? _____

c) Corporation? _____

d) Institution? _____

3) General:

a) How many employees? _____

b) Number of years in operation? _____

c) How long at present location? _____

d) Amount of monthly payroll? _____

e) Gross annual sales? _____

f) Other? _____

g) Other? _____

4) Facility Requirements:

a) Parking? _____

b) Zoning restrictions? _____

c) Local variances? _____

d) What does the Conditional Use Permit allow? _____

e) Building type? _____

f) Loading aspects: elevators, truck docks, conveyors? _____

g) Tax rates? _____

h) Utility consumption? _____

i) Other? _____

j) Other? _____

**NONRESIDENTIAL INTERVIEW CHECKLIST
(FIRST RAP CALL) (Cont.)**

(Form #)

EXHIBIT

10-EX-35 (NEW 1/2005)

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-
- 5) Preferences of Owner:
- a) Location? _____
 - b) Price (Rent/Lease) (Purchase)? _____
 - c) Terms? _____
 - d) Future expansion? _____
 - e) Change in operation? _____
 - f) Other? _____
 - g) Other? _____
- 6) Special Consideration:
- a) Street accessibility for walk-in trade? _____
 - b) Access to specialized utilities (high consumption of disposal volume)? _____
 - c) Rail access? _____
 - d) Landscaping expense or requirements? _____
 - e) Structural capacity? _____
 - f) Traffic requirements? _____
 - g) Other? _____
 - h) Other? _____
- 7) Personal Property:
- a) Compliance with local code? _____
 - b) Machinery and Equipment Appraisal? _____
 - c) Goodwill? _____
 - d) Cost to Cure? _____
 - e) Loss of Tangible Property/Substitute Property? _____
 - f) Self-Move or Commercial Mover? _____
 - g) Timing and Time frame? _____
- 8) Impact on Displacee:
- a) Losses created by the interruption of business? _____
 - b) Costs associated with adapting the new site for the use of the business? _____
 - c) Increased overhead caused by the replacement location? _____
 - d) Zoning and licensing requirements at the replacement location not in force at the displacement site? _____
 - e) Loss of clientele? _____
- 9) Advisory Assistance:
- a) Real Estate Broker? _____
 - b) Local Agency involvement? _____
 - c) Financing incentives? _____
 - d) Other? _____
 - e) Other? _____
- 10) Comments/Remarks: _____
- _____
- _____
- _____
- _____
-

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To assist in preparing specifications, the following essential items should be included in the final plan:

1. Order of the move (which items or areas are moved first/last).
2. Timing of the move (date, days, hours, phases).
3. Special handling required (equipment, packing, additional labor, protection).
4. Detach and reinstallation instructions (specific to each piece of machinery, equipment, or item).
5. Inventory list and schematic showing location.
6. Unique circumstances of the move.

The specifications should be complete, specific, and precise to prevent differences in interpretations and disagreement as to how the move is to take place or be reimbursed. Even when the amount to be claimed is a fixed amount as on a negotiated self-move, it should be understood that the negotiated amount presumes a move will be executed in the manner specified, and adjustments to be claimed will be made for deviations. All movers should have the same set of specifications when preparing their bid to move the personal property. The business owner and the RAP Agent should also be present during the walk-through by the movers.

The move specifications are the detailed plan describing the methods and means to be used to execute the move, and can be supplemented with schematics, drawings, layout plans, photos, and a copy of the inventory. The specifications should be developed in consultation with the displaced business operator and the bidders. In specialized or complex business moves, it may be necessary to obtain the assistance of a consultant employed by the agency who has the expertise in the type of business being moved. The business operator should not be relied on as the sole source of expertise in developing specifications on a complex move. The specifications should be developed and have the concurrence of all parties before bids or estimates are secured. All bids and estimates for the move should be based on the specifications.

The business owner and mover should be aware that deviations from the move specifications may cause delay in reimbursement in order to negotiate cost adjustments. It is best to discuss and resolve any disagreements or reservations about the specifications before the move begins. The RAP Agent must monitor any move that involves a professional consultant or requires detailed specifications. Preparation of accurate moving specifications will help assure that multiple bids or estimates are based on identical instructions. Specifications are also an essential tool for formalizing agreement with the displaced business owner.

Example: A small office equipment sales and repair enterprise will be displaced by the highway project. The company sells typewriters, calculators, etc., but produces most of its revenue from repair services. During the First RAP Call, the RAP Agent obtained the following information:

Employees - 4

Business Hours - 9 a.m. to 5 p.m.

Annual Gross Revenue/Profit: \$470,000/\$50,000

- Concerns:
- a. Must move in one day.
 - b. Needed repair scheduled; move immediately.
 - c. All electrical service must be grounded.
 - d. Drinking fountain must be reinstalled by a licensed plumber.
 - e. Owner will not pay employees overtime.
 - f. Must avoid mix-up of work tools between various workstations.

The specifications mailed to the moving companies preparing estimates must address the above concerns, and should be documented in writing. (See attached letter as an example.)

**GUIDELINES FOR DEVELOPING MOVING
SPECIFICATIONS (Cont.)**

(Form #)

EXHIBIT

10-EX-36 (NEW 1/2005)

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“Dear Mover:

The State of California, Department of Transportation (Department), is assisting the “name of company” to obtain firm, lump-sum bids for its forthcoming move from “displacement site” to “replacement site.” The owner has selected your firm and two others to prove these bids. The ultimate award of the moving service is solely at the election of the owner, but reimbursement by the Department will be based on the lowest qualified bid.

The move is anticipated for sixty days (60 days) from today’s date and must be completed in one day. A complete inventory of all items to be moved is attached. The mover will be responsible for reinstallation of the drinking fountain in accordance with local codes and licensing requirements. The new location of the fountain is shown in the attached drawing. The business desires to move the desk and equipment prior to the opening of business on moving day. Accordingly, a separate move must be scheduled for those items prior to 9 a.m. There are five workstations with separate hand tools. Each workstation must be separately packed. The boxed contents should be numbered to correspond to the appropriate station. For all aspects of the move, you will be expected to perform services in a careful workmanlike manner so as to avoid damage. Full replacement value insurance is requested with a personal property valuation of four hundred thirty-five thousand dollars (\$435,000), and a deductible not to exceed one thousand dollars (\$1,000). All racks, worktables, desk and fixtures moved should be placed as shown in the attached new layout plan. The business owner and I will be present during the move to address unforeseen issues.”

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GUIDELINES FOR MONITORING A NONRESIDENTIAL MOVE

10-EX-37 (NEW 1/2005)

(Form #)

Some guidelines to assist the RAP Agent to properly monitor a nonresidential move:

The amount of time and the records prepared during on-site monitoring of the move should be consistent with the complexity of the move. Monitoring should be performed by personnel familiar with the move specifications, the moving bids, and the provisions and limitations of the Relocation Assistance Program.

Complex moves should have multiple on-site visits by the RAP Agency during the move, if not a continuous monitoring presence. The RAP Senior should require continuous monitoring for the following situations:

1. There was a wide variance in the moving bids received.
2. The nonresidential displacee has questioned the validity of the bid(s).
3. There is a potential for major changes in the inventory.
4. The nonresidential displacee has indicated a desire to appeal their moving benefits.

The monitoring should be active, not passive. The RAP Agent must make their presence known to the nonresidential displacee and the person(s) in charge of the move. Written documentation of the RAP Agent's monitoring actions should be kept which should include observations of activities. Deviations from the specifications should be discussed with the parties involved as well as recorded on the monitor's report. In addition to a written record of the move, the RAP Agency should consider photographs and/or video recording.

The RAP Agent should have the authority to approve additional unforeseen work on the spot and make appropriate adjustments to the bid (10.05.06.01), and all parties present should be made aware of the RAP Agent's level of authority, or lack thereof. If there are adjustments that cannot be approved by the RAP Agent, the monitoring report should describe the situation in detail so that the RAP Senior will be able to make an informed decision after the fact.

The RAP Agent must observe the move process to determine if the move was performed in an efficient manner and according to the specifications on which the bid was based. If the move is executed in a different manner than set forth in the specifications, the RAP Agent can adjust the amount to reflect any lower costs.

For complex or complicated moves, the RAP Agent should have a pre-move conference with the moving company(ies) and the nonresidential displacee. Issues to discuss and agree on are:

1. Authority of the RAP Agent to make adjustments to the bid, above or below the original amount.
2. Coordination with specialists to dismantle and reassemble equipment.
3. Confirmation of the items to be moved per the certified inventory.
4. Costs that the nonresidential displacee must bear on their own, e.g., moving an item of realty acquired at salvage value.
5. Clarification of the moving specifications such as timing, access, order.

Prior to the move, the RAP Agent should review the specifications of the proposed move plan schedule and determine the amount and level of monitoring that will be required, including having a second agent at the replacement site to monitor the unloading and reassembly. On the day of the move, the RAP Agent should arrive at the scene before the movers and ensure everything is ready.

The written monitoring report should include arrival time of the movers; type of equipment; level of manpower; names of supervisors [nonresidential displacees and the moving company(ies)]; breaks and lunches; departure time of each load; and the final load. The RAP Agent should also document: a) unusual events including observations about possible ineffectiveness in the use of the labor and equipment; b) the amount of time the nonresidential displacee uses their resources to move personal property; c) a change in the process or inventory that might cause a significant change in costs; and d) damages caused by the move, or an item already damaged, that might come into dispute after the move.

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SELF-MOVE AGREEMENT

10-EX-38 (NEW 1/2005)

(Form #)

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PERSONAL INFORMATION NOTICE

Pursuant to the Federal Privacy Act (P.L. 93-579) and the Information Practices Act of 1977 (Civil Code Sections 1798, et seq.), notice is hereby given for the request of personal information by this form. The requested personal information is voluntary. The principal purpose of the voluntary information is to facilitate the processing of this form. The failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under Article 6, Section 1798.24 of the IPA of 1977. Each individual has the right upon request and proper identification, to inspect all personal information in any record maintained on the individual by an identifying particular. Direct any inquiries on information maintenance to your IPA Officer.

Dist_____
Co_____
Rte_____
KP (P.M.)_____
Exp Auth

Parcel No. _____

It is hereby understood and agreed by _____ (Claimant), and the State of California, Department of Transportation, District _____, Relocation Assistance Branch (Department) that the total amount of \$ _____ will be paid to Claimant for the relocation of all personal property itemized on the attached "Certified Inventory." Said personal property will be moved from the State acquired property at _____ to the replacement business location at _____ by _____.

The parties further agree as follows:

1. The "Certified Inventory" shall not contain any property classified as realty or property on consignment, and shall not contain any property for which payment has been made in the Right of Way Contract for the State acquired property.
2. No claim for payment shall be honored by the Department until:
 - A. Claimant has completed the relocation of all items as set forth in the attached Certified Inventory from the property acquired by the State.
 - B. Claimant has certified that items listed on the attached Certified Inventory were actually relocated to the replacement site.
 - C. A representative of the Department of Transportation has personally inspected the State acquired property and the replacement location to verify completion of the move.
3. Claimant shall provide the Department with reasonable advance notice of the date of the start of the move.
4. If upon inspection by the Department, any portion of the items on the attached Certified Inventory were not relocated to the replacement site for any reason whatsoever, an appropriate reduction in the agreed amount shall be made by the Department.
5. The claim for payment shall be submitted within eighteen (18) months of the date of moving from the State acquired property.
6. Claimant shall allow a representative of the Department to monitor the move, and such monitoring shall not carry with it any liability or responsibility on the part of the State of California or its representative.
7. Neither the Department nor any officer or employee thereof shall be responsible for any damage or liability occurring by reason of anything done or omitted by Claimant under or in connection with this agreement. It is also understood and agreed that Claimant shall fully indemnify and hold the Department harmless for any liability imposed by injury or damage to property occurring by reason of anything done or omitted by Claimant in connection with this agreement.

SELF-MOVE AGREEMENT (Cont.)

(Form #)

EXHIBIT

10-EX-38 (NEW 1/2005)

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8. In the event the actual cost of the move exceeds the amount agreed upon above, only those additional costs which can be shown to have been actually required in order to complete the move will, within certain limitations, be reimbursed. In this event, the actual cost of the entire move must be itemized and documented in support of the claim. All moving expense records are subject to review and audit by a representative of the Department. The total cost, under any circumstance, shall not exceed the amount of the lowest bid.

[Choose one of the following:]

9a. The payment of \$ _____ is based on a Move Cost Finding (MCF) prepared by the District.

9b. The payment of \$ _____ is based on qualified bid(s) as adjusted for profit and overhead.

This agreement does not include specialized and related moving costs which are to be performed by others. These costs will be handled under a separate claim upon completion of the work and presentation of itemized paid bills.

APPROVED:

Relocation Assistance Branch

Claimant

Date _____

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